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2 A F T E R N O O N S E S S I O N

3 1:51 p.m.

01:51:02 4 THE VIDEO OPERATOR: This is
01:51:06 5 videotape number 7, the continuation of the
01:51:08 6 deposition of Mr. Whitman. Today is August 15th,
01:51:12 7 1995. The time on the screen is 1:51:24. You're
01:51:14 8 on the record.

9 J O H N M. W H I T M A N,
10 resumed, having been previously duly sworn, was
11 examined and testified further as follows:

12 CONTINUED EXAMINATION

51:16 13 BY MR. ROGERS:

01:51:18 14 Q. Good afternoon, Mr. Whitman.

01:51:18 15 A. Good afternoon.

01:51:20 16 Q. Between the time that we broke for
01:51:22 17 lunch today and right now, did you speak with
01:51:26 18 counsel about any of the documents that have been
01:51:28 19 entered as exhibits in this deposition?

01:51:32 20 A. Yes, I did.

01:51:34 21 Q. Could you describe those
01:51:34 22 conversations?

01:51:38 23 MR. NUNLEY: Absolutely not;
01:51:38 24 attorney/client privilege.

51:42 25 MR. ROGERS: You're going to instruct

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01:51:44 2 the witness not to answer?

01:51:44 3 MR. NUNLEY: Absolutely.

01:51:46 4 Q. Do you accept that instruction?

01:51:46 5 A. Yes, I do.

01:51:48 6 Q. Could you identify the documents that

01:51:50 7 you spoke about.

01:51:50 8 MR. NUNLEY: You may do that.

01:51:52 9 A. It was the last document. That's a
01:51:54 10 poor answer. Let me get it for you.

01:52:00 11 Q. Exhibit 13?

01:52:00 12 A. Yes, that's correct.

01:52:04 13 Q. Is that the only document?

01:52:04 14 A. Yes, sir.

01:52:10 15 Q. Earlier today we talked about the
01:52:16 16 data in paragraph 25 of your affidavit, Page 12?

01:52:30 17 A. Okay.

01:52:32 18 Q. And you indicated to me this morning
01:52:38 19 that that data was based upon the July '95 data
01:52:40 20 that you had seen in preparing for this
01:52:40 21 affidavit?

01:52:40 22 A. Yes, sir.

01:52:48 23 Q. The data of July '95 that you're
01:52:50 24 referring to, do you know when those tests were
01:52:50 25 conducted?

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01:52:56 2 A. During July of '95, but the specific
01:52:56 3 dates I do not remember.

01:53:08 4 Q. Okay. Earlier today I asked you
01:53:18 5 about paragraph 18 on Page 9 of your affidavit.
01:53:26 6 Specifically the final sentence, and I'll read
01:53:30 7 it, "None of the flavors, preservatives or
01:53:34 8 humectants added to RLB or RLTC contains
01:53:36 9 nicotine." How do you know that?

01:53:40 10 A. Analysis of those compounds when I
01:53:44 11 saw them as QA manager at Park, nicotine was not
01:53:48 12 listed as a constituent of any of those
' 53:48 13 materials.

01:53:52 14 Q. And remind me the years in which you
01:53:52 15 were the QA manager of Park 500?

01:54:00 16 A. Roughly, '77 through '84.

01:54:08 17 Q. And are you sure that from 1984 to
01:54:12 18 the present there's been no change, or rather no
01:54:20 19 new flavors added to either RLB or RLTC?

01:54:24 20 A. The only difference that I'm aware of
01:54:30 21 then until now is the substitution of the liquid
01:54:32 22 version M10 for the Cochise.

01:54:38 23 Q. And I have the same question with
01:54:40 24 respect to humectants. Are you sure that from
' 54:48 25 1984 to the present there's been no new

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01:54:52 2 humectants added to either RLB or RLTC?

01:55:06 3 A. I don't remember if the humectants
01:55:10 4 are the same; but I have seen analyses of the
01:55:12 5 current humectants and they also do not contain
01:55:14 6 nicotine.

01:55:16 7 Q. What specific analyses have you seen?

01:55:18 8 A. Just the raw material analyses, the
01:55:20 9 spec sheet that would come with those materials.

01:55:30 10 Q. And are you sure that the analyses
01:55:34 11 that you've seen are of all of the current
01:55:36 12 humectants that are added to either RLB or RLTC?

55:40 13 A. They were for PG and glycerine which
01:55:42 14 are the current humectants.

01:55:44 15 Q. And finally with respect to the
01:55:48 16 preservatives, are you sure that from 1984 to the
01:55:52 17 present there have been no new preservatives
01:55:54 18 added to either RLB or RLTC?

01:55:58 19 A. From 1984 till the present I know of
01:56:02 20 no new preservatives that are being used.

01:56:06 21 Q. So paragraph 18 is based upon
01:56:12 22 specific data that you saw prior to or up to 1984
01:56:20 23 with respect to flavors and preservatives; is
01:56:24 24 that correct?

56:22 25 A. Let me think for a minute.

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01:56:22 2 Q. Okay.

01:56:28 3 A. In any event, Alex, I'm trying to
01:56:30 4 remember when did we introduce paraben and the
01:56:34 5 year is actually escaping me sitting here. But I
01:56:38 6 have also seen analysis of paraben and it does
01:56:40 7 not contain nicotine.

01:56:48 8 Q. Remind me what your undergraduate
01:56:50 9 education is in, Mr. Whitman?

01:56:52 10 A. I have a BS degree in chemical
01:56:52 11 engineering.

01:56:54 12 Q. And your Master's was in commerce I
' 56:56 13 think you said?

01:56:56 14 A. Commerce.

01:56:56 15 Q. Is that business?

01:57:00 16 A. It's a poor man's version of an MBA.
01:57:00 17 There's no thesis required.

01:57:06 18 Q. And turning to paragraph 38 that we
01:57:16 19 were speaking about just prior to the break, when
01:57:18 20 you use the term in paragraph 38 commercially
01:57:24 21 feasible manner, did you conduct any cost/benefit
01:57:26 22 analyses of any procedure in reaching that
01:57:26 23 conclusion?

01:57:30 24 A. No, I did not.

01:57:34 25 Q. Did you identify any processes that

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01:57:38 2 you subsequently determined were not commercially
01:57:40 3 feasible?

01:57:42 4 A. I'm sorry, say that again, Alex.

01:57:48 5 Q. Sure. In contemplating -- in

01:57:50 6 contemplating the accuracy of ABC's assertion as
01:57:56 7 it was told to you, did you think of or identify
01:58:00 8 any potential procedures which you subsequently
01:58:02 9 concluded were not commercially feasible and so,
01:58:04 10 therefore, you could make the statement in
01:58:08 11 paragraph 38 that you know of no procedures that
01:58:10 12 are commercially feasible? Do you understand my
01:58:10 13 question?

01:58:14 14 A. I know of no procedures, so,

01:58:16 15 therefore, I didn't contemplate any from a
01:58:18 16 business standpoint.

01:58:20 17 Q. Okay. I'm just trying, again, to
01:58:22 18 understand what you mean by commercially
01:58:30 19 feasible. If I asked you whether it was a
01:58:32 20 physical impossibility for Philip Morris to
01:58:36 21 remove nicotine from the solubles in the RL
01:58:38 22 process, what would your answer be?

01:58:38 23 MR. NUNLEY: You'd get an objection
01:58:42 24 first because I think ~~using~~ physical
01:58:44 25 impossibility, I mean that doesn't fall within

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01:58:48 2 the realm of materiality in this case. He has
01:58:52 3 told you he knows of no procedure by which to do
01:59:06 4 that. He says at 13:58:14, "I know of no
01:59:08 5 procedure, so, therefore, I didn't contemplate
01:59:10 6 any from a business standpoint."

01:59:16 7 Q. So, could you have dropped the last
01:59:18 8 three words of the third sentence so that the
01:59:22 9 third sentence would have read instead, "I am
01:59:26 10 unaware of any technology that would allow Philip
01:59:28 11 Morris to remove the nicotine contained in the
01:59:32 12 solubles," period? Could you drop the last five
59:34 13 words and that sentence would mean the same thing
01:59:36 14 as you intended it to mean in its current state
01:59:38 15 in the affidavit?

01:59:54 16 A. From my own personal perspective,
01:59:54 17 probably, yes.

02:00:16 18 Q. Having reviewed that portion -- let
02:00:18 19 me return to Exhibit 13.

02:00:24 20 A. Exhibit 13?

02:00:26 21 Q. Right. The Sepracor proposal.
02:00:30 22 First, having reviewed whatever portion of the
02:00:30 23 document it is that you've reviewed, does that
02:00:32 24 refresh your recollection about any business
00:38 25 dealings between Philip Morris and Sepracor,

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2 Inc.?

02:00:40 3 A. I have no knowledge of any dealings
02:00:42 4 in that regard.

02:00:42 5 Q. And have you read the executive
02:00:44 6 summary of Exhibit 13?

02:00:48 7 A. Yes, I read that this morning with
02:00:48 8 you.

02:00:50 9 Q. And having reviewed the executive
02:00:58 10 summary of that document, do you understand the
02:01:00 11 procedure described in the executive summary to
02:01:04 12 be a means by which Philip Morris could remove
01:08 13 nicotine from the solubles in the RL process?

02:01:14 14 A. From just reading the executive
02:01:16 15 summary I have no idea.

02:01:22 16 Q. How about based upon your reading of
02:01:24 17 whatever other portions of the document you read
02:01:30 18 this morning? Your understanding of the document
02:01:36 19 right now, I'm not asking you anything more than
02:01:36 20 that, just your understanding of the document to
02:01:38 21 the extent that you've read it, do you understand
02:01:42 22 the procedure described in this document to be a
02:01:44 23 means by which Philip Morris could remove
02:01:48 24 nicotine from the solubles in the RL process?

01:50 25 MR. NUNLEY: Alex, where in the

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02:01:52 2 document is the procedure described?

02:01:58 3 Q. Well, if I could focus your attention
02:02:06 4 on the -- let's start with your distinction in
02:02:16 5 paragraph 38 of the patent number 5,018,540, and
02:02:18 6 in describing your understanding of that patent
02:02:20 7 in the second to last sentence of paragraph 38,
02:02:24 8 you say as follows: "The technology in that
02:02:28 9 patent can only be used to remove nicotine from
02:02:32 10 dry," underlined, "tobacco. It cannot be used to
02:02:36 11 remove nicotine from a liquid," underlined,
02:02:40 12 "solution, like the solubles." So I take it
02:42 13 that that's a distinction you make between what
02:02:44 14 happens in the RL process and the process
02:02:50 15 described in U.S. patent number 5,018,540; is
16 that correct?

02:02:52 17 A. Which is basically the ART process,
02:02:52 18 correct.

02:02:54 19 Q. Okay. And let's turn to the
02:02:58 20 executive summary of Whitman Exhibit 13, the
02:03:04 21 first sentence of the second paragraph, and I'll
02:03:04 22 read it, "Sepracor has identified a
02:03:08 23 membrane-based process scheme for the selective
02:03:10 24 removal of nicotine from an aqueous feed stream
03:14 25 derived from Philip Morris's proprietary

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02:03:16 2 extractor process without affecting the levels of
02:03:22 3 other flavor components (lactones, amides,
02:03:34 4 terpenoids, esters, et cetera)." Exhibit 13
02:03:36 5 contemplates a procedure by which nicotine is
02:03:40 6 removed from an aqueous solution. Do you agree
02:03:40 7 with that?

02:03:42 8 MR. NUNLEY: Objection to the use of
02:03:44 9 the term contemplates.

02:03:48 10 Q. It is describing a system for
02:03:50 11 removing nicotine from an aqueous solution; is
02:03:52 12 that correct?

02:03:52 13 MR. NUNLEY: The executive summary?

02:03:54 14 MR. ROGERS: Yes, that's where we
02:03:54 15 are.

02:04:02 16 A. I mean that's what it states in that
02:04:02 17 first sentence.

02:04:04 18 Q. Okay. And turning to paragraph 38 of
02:04:18 19 your affidavit you describe the patent 5,018,540
02:04:20 20 as not applicable to the RL process because it
02:04:24 21 can only be used to remove nicotine from dry
02:04:28 22 tobacco, not from a liquid solution. Is the
02:04:32 23 description in the executive summary closer to
02:04:34 24 what happens in the RL process than U.S. patent
02:04:38 25 5,018,540?

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02:04:42 2 A. I have no idea from the standpoint of
02:04:44 3 the fact that that's such a generalized statement
02:04:50 4 here. I mean what aqueous feed stream?

02:04:52 5 Q. Is this document, Whitman Exhibit 13,
02:04:54 6 the first you've seen description of a procedure
02:04:58 7 to remove nicotine from an aqueous solution?

02:05:06 8 A. Yes, sir. To my recollection, yes.

02:05:08 9 Q. So prior to today, you had never
02:05:12 10 heard of any procedure to remove nicotine from an
02:05:14 11 aqueous solution?

02:05:20 12 A. Not that I can recall, no.

05:22 13 Q. Did you have occasion to read Whitman
02:05:24 14 Exhibit 13 during the break?

02:05:26 15 A. No, I really didn't.

02:05:28 16 Q. You didn't look at it at all?

02:05:30 17 A. We looked at it, but only one
02:05:32 18 particular section.

02:05:48 19 Q. Now having looked at the executive
02:05:48 20 summary and whatever other sections you've looked
02:05:54 21 at today, would you change any portion of your
02:06:00 22 testimony in paragraph 38 of your affidavit?

02:06:14 23 A. Not -- not that I can see, no.

02:07:12 24 Q. You indicated earlier today that in
07:18 25 preparing paragraph 38 you did see U.S. patent

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02:07:22 2 5,018,540?

02:07:56 3 A. Yes, I did.

4 MR. ROGERS: Would you mark this as

02:07:56 5 Exhibit 14.

6 (Whitman Exhibit 14 for
7 identification, copy of U.S. patent 5,018,540,
8 production numbers 2022902477 through 2022903291,
9 and PA 151916 through PA 151975.)

02:08:08 10 Q. You've just been handed what's been
02:08:36 11 marked as Whitman Exhibit 14 which is a copy of
12 U.S. patent 5,018,540 and the production numbers
13 are 2022902477 to 2022903291. Corresponding
14 defendant production numbers are PA 151916 to PA
15 151975.

02:08:42 16 Does this appear to be the same
02:08:48 17 patent that you reviewed in preparing paragraph
02:08:48 18 38 of your affidavit?

02:08:58 19 A. Yes, it does.

02:09:00 20 Q. And could you identify any and all
02:09:04 21 sections of this patent on which you relied in
02:09:12 22 preparing paragraph 38?

02:09:14 23 MR. NUNLEY: Well, if you're going to
02:09:16 24 say that, Alex, I'll ask him to read the entire
02:09:16 25 patent.

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02:09:18 2 MR. ROGERS: He indicated that he did
02:09:20 3 read the patent in preparing paragraph 38.

02:09:22 4 MR. NUNLEY: That's right, and that
02:09:26 5 was a week or so ago. If you want him to tell
02:09:32 6 you each and every section that he's relied on
02:09:36 7 then he can simply read through it and as he
02:09:38 8 reaches the sections he relied on he can tell you
02:09:42 9 that if that's how you want to do it.

02:09:46 10 A. We discussed the patent from a
02:09:48 11 general standpoint, I believe I said this this
02:09:54 12 morning, and did not go through it line by line.
09:56 13 I mean the patent as it's described refers
02:09:58 14 specifically to the ART process and the ART
02:10:00 15 process is based on using dry tobacco.

02:10:04 16 Q. And so is that the distinction that
02:10:10 17 you relied on between the ART patent and the RL
02:10:12 18 process in executing paragraph 38 of your
02:10:16 19 affidavit, that distinction between dry versus
02:10:16 20 wet?

02:10:18 21 MR. NUNLEY: Objection as to form.

02:10:20 22 A. You need to clarify. I'm not sure
02:10:22 23 exactly what you're referring to.

02:10:30 24 Q. You indicated that the patent as it's
10:32 25 described refers specifically to the ART process

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02:10:38 2 and the ART process is based on using dry
02:10:40 3 tobacco. And so my question was is the
02:10:44 4 distinction that you've just relied -- is that
02:10:48 5 the distinction, meaning dried tobacco versus a
02:10:50 6 soluble solution, the distinction that you relied
02:11:00 7 on in determining that the ART patent, the
02:11:02 8 technology described in the ART patent could not
02:11:02 9 be used in the RL process?

02:11:20 10 A. Primarily, to my recollection, yes.

02:11:26 11 Q. Could you describe what you
02:11:28 12 understand the ART process to be?

11:36 13 A. It's use of supercritical fluid
02:11:40 14 extraction to remove nicotine from tobacco.

02:11:44 15 Q. From dry raw tobacco materials; is
16 that correct?

02:11:48 17 A. From tobacco leaf, yes, the lamina
02:11:48 18 portion.

02:11:50 19 Q. Does it have to be lamina?

02:11:56 20 A. As opposed to?

02:11:58 21 Q. Any other part of the tobacco leaf?

02:12:04 22 A. I don't recall.

02:12:04 23 Q. Could you, for example, use the
02:12:08 24 supercritical extraction process to remove
12:16 25 nicotine from dry stems?

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02:12:18 2 MR. NUNLEY: John, if you know of
02:12:20 3 testing of that type you can answer. If you
02:12:22 4 don't, I think it calls for speculation.

02:12:24 5 A. I've never seen results on that
02:12:24 6 testing per se.

02:12:28 7 Q. My question was do you know whether
02:12:30 8 you could use the supercritical extraction
02:12:32 9 process --

02:12:32 10 A. I'm not sure.

02:12:34 11 Q. To remove nicotine from dry --

02:12:34 12 A. I'm not sure.

' 12:36 13 Q. You're not sure. Do you know whether
02:12:38 14 anybody's conducted any tests?

02:12:38 15 A. Not that I'm aware of.

02:12:40 16 Q. Did you inquire as to whether anybody
02:12:42 17 at Philip Morris had conducted such tests in
02:12:44 18 preparing paragraph 38 of your affidavit?

02:12:44 19 A. On stems?

02:12:50 20 Q. Yes.

02:12:50 21 A. No, I did not.

02:12:52 22 Q. How about whether you could -- tests
02:12:54 23 on whether you could use the supercritical
02:12:56 24 extraction process to remove nicotine from any of
' 13:00 25 the other dry raw material components used in RL?

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02:13:12 2 A. No, I didn't ask that question.

02:13:18 3 Q. And if I can direct your attention to
02:13:24 4 column 1 of the patent which appears on the
02:13:28 5 fourth page of the exhibit that you have,
02:13:32 6 production number PA 151919, there are several
02:13:42 7 patents cited in the second paragraph and I'll
02:13:44 8 just go through some of them. Did you consult
02:13:52 9 the first one, patent number ~~6,078,362~~ in
02:13:52 10 preparing your affidavit?

02:13:52 11 A. No, sir.

02:13:56 12 Q. Did you consult any patent cited in
13:58 13 that second paragraph here, and take a moment to
02:14:00 14 look at all of them, did you consult any of them
02:14:08 15 in preparing paragraph 38 of your affidavit?

02:14:10 16 MR. NUNLEY: Objection; compound.

02:14:34 17 A. No, not that I'm aware of.

02:14:36 18 Q. And let me ask you specifically, do
02:14:38 19 you see halfway through the paragraph there's a
02:14:40 20 sentence that begins, "Nicotine has been
02:14:44 21 separated from solutions of tobacco extracts and
02:14:46 22 the nicotine depleted solvent returned to the
02:14:52 23 tobacco. Representative of such processes are
02:14:54 24 those disclosed in U.S. patent numbers
15:02 25 ~~2,655,622~~
2,083,622"? Did you consult that patent?

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- 02:15:04 2 A. No, sir.
- 02:15:06 3 Q. Does the name Liebrich ring a bell?
- 02:15:06 4 A. No, sir.
- 02:15:08 5 Q. Did you consult the next patent,
802,487
~~8,002,487?~~
- 02:15:14 6 A. No, sir.
- 02:15:16 7 Q. Does the name Wimmer ring a bell?
- 02:15:16 8 A. No, sir.
- 02:15:22 9 Q. Did you consult patent 2,805,667?
- 02:15:22 10 A. No, sir.
- 02:15:26 11 Q. Does the name von Bethman ring a
bell?
- 15:26 12 A. No, sir.
- 02:15:26 13 Q. Did you consult patent 3,046,997?
- 02:15:32 14 A. No.
- 02:15:34 15 Q. Does the name Hind ring a bell?
- 02:15:38 16 A. Only from this morning's discussion.
- 02:15:38 17 Q. And finally, did you consult patent
3,139,435?
- 02:15:42 18 A. No, sir.
- 02:15:46 19 Q. And does the name Staley ring a bell?
- 02:15:50 20 A. No, sir.
- 02:15:52 21 Q. Reading the description that's
contained in this patent, specifically "Nicotine
- 15:56 22
- 15:56 23
- 15:56 24
- 15:56 25

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02:16:00 2 has been separated from solutions of tobacco
02:16:04 3 extracts and the nicotine depleted solvent
02:16:06 4 returned to the tobacco," reading that
02:16:10 5 description, do you think that you should have
02:16:14 6 consulted those patents in making the
02:16:16 7 determination that you did in paragraph 38?

02:16:18 8 MR. NUNLEY: Objection. He didn't
02:16:20 9 say I've researched everywhere, he says I am
02:16:22 10 unaware of any technology.

02:16:24 11 MR. ROGERS: Absolutely, and I'm just
02:16:26 12 asking whether he thinks he should have consulted
16:28 13 those patents in light of the description that's
02:16:30 14 contained in this one.

02:16:30 15 A. No.

02:16:32 16 Q. And what's the basis for your
02:16:32 17 answer?

02:16:34 18 MR. NUNLEY: Objection;
02:16:38 19 argumentative. The question -- the affidavit
02:16:40 20 says I am unaware. Are you saying that he had
02:16:42 21 some obligation --

02:16:44 22 MR. ROGERS: No, I didn't use that
02:16:46 23 word. I simply said does he think that he should
02:16:46 24 have.

16:48 25 MR. NUNLEY: And he said no.

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02:16:50 2 Q. Okay. And I'm saying what's the
02:16:52 3 basis for your answer. I don't think that's
02:16:52 4 argumentative.

02:16:54 5 MR. NUNLEY: Well, I object. It is
02:16:54 6 argumentative.

02:16:58 7 Q. Okay. What's the basis for your
02:16:58 8 answer?

02:17:00 9 A. Since there was an R&D person that
02:17:04 10 was present in that particular regard, if any of
02:17:06 11 those patents had any applicability to the RL
02:17:12 12 process I believe that would have come to light
17:12 13 at that point.

02:17:18 14 Q. Because you were with Mr. Uhl who is
02:17:20 15 in R&D?

02:17:20 16 A. Correct.

02:17:24 17 Q. And so you relied on Mr. Uhl's
02:17:26 18 general knowledge as a member of the R&D
02:17:26 19 department?

02:17:26 20 A. That's correct.

02:18:00 21 Q. If I can direct your attention to --
02:18:02 22 yes, you can set that exhibit aside -- to
02:18:12 23 paragraph 28 of your affidavit, it's on Page 13,
02:18:18 24 and I'll just read it for the record: "I have
18:20 25 been told that ABC contends that the separation

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02:18:22 2 of solubles and their recombination with base web
02:18:26 3 that occurs in the RL process involves the use of
02:18:30 4 'extraneous' nicotine because the solubles in
02:18:34 5 base web do not have a 'common origin.' That is
02:18:38 6 not the case. Park 500 is continuously
02:18:42 7 separating the solubles from the raw materials,
02:18:46 8 is continuously processing fibers into base web,
02:18:48 9 is continuously processing solubles into size and
02:18:52 10 is continuously recombining the base web with the
02:18:56 11 size to form the finished RL sheet. All of the
02:19:00 12 nicotine that is found in the RL produced by Park
19:02 13 500 comes from the tobacco materials that are
02:19:06 14 used to make the RL sheet. All of the tobacco
02:19:08 15 solubles that are recombined with the base web
02:19:14 16 comes from those same materials. And the
02:19:16 17 solubles generated by the process are recombined
02:19:20 18 solely with fibers derived from the materials
02:19:22 19 that are used at the beginning of the RL
02:19:24 20 process. Thus, the solubles and base web do have
02:19:28 21 a common origin - the tobacco materials that are
02:19:36 22 processed at Park 500."
02:19:40 23
02:19:44 24 Starting from a position of startup
19:48 25 after you've shut down the plant, how long does
it take in processing time to generate base web?

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02:20:02 2 A. Several hours, Alex. I don't
02:20:02 3 remember the exact time.

02:20:08 4 Q. Could you say roughly?

02:20:10 5 MR. NUNLEY: More roughly than
02:20:10 6 several hours?

02:20:12 7 MR. ROGERS: I wouldn't have asked it
02:20:14 8 if I didn't mean anything more specific than
02:20:16 9 several hours.

02:20:18 10 MR. NUNLEY: What do you want it down
02:20:18 11 to, the minutes?

02:20:20 12 MR. ROGERS: No.

20:22 13 Q. Do you have any better sense than
02:20:26 14 several hours? Three, four?

02:20:28 15 A. It would strictly be a guess. You
02:20:32 16 have to build levels of the various tanks like
02:20:34 17 the stock chest and the machine chest. That
02:20:38 18 takes time. It's several hours. I can't give
02:20:40 19 you a more precise number than that.

02:20:42 20 Q. And do you know how long in
02:20:46 21 processing time it takes to process what you've
02:20:50 22 described as size which is that which is applied
02:20:50 23 to the base web?

02:20:54 24 A. Same answer. It's several hours to
02:20:58 25 get to that point, but again, I can't remember an

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02:20:58 2 exact number.

02:21:00 3 Q. Do you know whether it's precisely
02:21:04 4 the same, roughly the same amount -- I'm sorry,
02:21:06 5 approximately the same amount of processing time
02:21:10 6 to make the base web as it does take to make
02:21:10 7 size?

02:21:14 8 A. My recollection is it takes longer to
02:21:16 9 get the solubles portion through the system.

02:21:20 10 Q. Than the fibers to the base web?

02:21:20 11 A. Than the fiber portion, yes.

02:21:22 12 Q. So what happens, describe to me what
21:28 13 happens after a startup situation in terms of
02:21:32 14 making sure that there's actually size applied to
02:21:36 15 the base web? Does the base web in a sense wait
02:21:38 16 for the size or how does it work?

02:21:40 17 A. What you would have is a situation in
02:21:42 18 which to get the paper machine up and running you
02:21:48 19 would probably start feeding stock, fiber to the
02:22:00 20 wire probably in the order of magnitude of an
02:22:04 21 hour before the size would be ready to run to try
02:22:06 22 and level out the paper machine, get the basis
02:22:10 23 weight of the base web correct and so forth.

02:22:20 24 Q. Would you describe what you mean by
02:22:20 25 feeding stock?

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02:22:22 2 A. You have stock that now you've --
02:22:26 3 gotten the levels built up to where you've got an
02:22:28 4 acceptable level of fiber in both the stock chest
02:22:32 5 and the machine chest. You're not trying to fill
02:22:34 6 those vessels. You've got some level. You don't
02:22:38 7 want to start up and then instantaneously run
02:22:42 8 out, right. So you built a level that's
02:22:44 9 concomitant with keeping the process running on a
02:22:46 10 continuous basis and then you start feeding that
02:22:50 11 stock to the head box which is described --
02:22:52 12 described in here which then feeds on to the
22:56 13 wire, and you start that process through the rest
02:23:00 14 of the sheet-forming process, forming eventually
02:23:06 15 base web. And you probably do that, I mean if
02:23:10 16 it's a great startup it might only take you a
02:23:14 17 half an hour or 40 minutes to do that to get the
02:23:18 18 machine running. If it's something goes wrong,
02:23:22 19 there's a mechanical failure in some piece of
02:23:22 20 equipment on the paper machine it could take
02:23:24 21 several hours to get to that point.

02:23:30 22 Q. When you say to get to that point you
02:23:32 23 mean the point at which you have base web?

02:23:32 24 A. Correct.

02:23:34 25 Q. And so if we take your example of

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02:23:36 2 what you call a great startup, what is that?

02:23:38 3 A. There's no mechanical problems,

02:23:44 4 everything on the paper machine works exactly the

02:23:44 5 way --

02:23:46 6 Q. I see. Is that a terminology that's

02:23:48 7 used?

02:23:50 8 A. Yes, I'm sorry. That's colloquial.

02:23:52 9 Q. Okay. So from the time of startup to

02:23:56 10 the time when you have base web, you say roughly

02:23:58 11 40 minutes, half hour, 40 minutes?

02:24:02 12 A. Yeah, 40 minutes or so.

24:08 13 Q. Okay. Assuming we're in a great

02:24:12 14 startup, how long between the time that you have

02:24:16 15 that base web, how long is it between the time

02:24:18 16 you have that base web and the time that you

02:24:20 17 apply size to that base web?

02:24:22 18 A. Assuming again a completely cold

02:24:32 19 startup, and again a guesstimate only, probably

02:24:38 20 about an hour more, somewhere in the time frame

02:24:40 21 of an hour and a half from the time you've

02:24:48 22 started up. In other words, if you get to the

02:24:52 23 machine and you're making base web and it's

02:24:56 24 taking you only 40 minutes to get to that point,

24:58 25 it's going to be another hour, approximately, to

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02:25:02 2 an hour and a half before you have size. Again,
02:25:06 3 all things considered, everything goes
02:25:08 4 okey-dokey, you build the levels that you're
02:25:10 5 supposed to build in all of the tanks and so
02:25:10 6 forth.

02:25:26 7 Q. And so returning to paragraph 28 of
02:25:34 8 your affidavit it says in the beginning you've
02:25:36 9 been told that. Who told you what follows in
02:25:38 10 that sentence?

02:25:46 11 A. Counsel.

02:25:48 12 Q. And then at the end of the sentence
02:25:52 13 you have in quotes a "common origin" and then you
02:26:00 14 say "That is not the case." In order to reject
02:26:04 15 the first sentence, what you've been told in the
02:26:06 16 first sentence you have to have an understanding
02:26:10 17 of what is meant by common origin, do you agree
02:26:14 18 with that? You can't reject that which you don't
02:26:14 19 know what it means?

02:26:16 20 MR. NUNLEY: Objection;
02:26:16 21 argumentative.

02:26:18 22 MR. ROGERS: That one is
02:26:18 23 argumentative.

02:26:22 24 MR. NUNLEY: Oh, thanks. So you
02:26:22 25 withdraw it?

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02:26:24 2 MR. ROGERS: No.

02:26:24 3 MR. NUNLEY: You admit it's

02:26:28 4 argumentative and you don't withdraw it?

02:26:28 5 MR. ROGERS: Let me rephrase the

02:26:28 6 question.

02:26:30 7 Q. What did you understand the term

02:26:36 8 common origin to mean as it was told to you and

02:26:40 9 to which you've rejected in the second sentence

02:26:40 10 of paragraph 28?

02:26:50 11 A. That they don't come from the same

02:26:50 12 source.

02:26:52 13 Q. What do you mean by source?

02:26:54 14 A. That they don't come from the same

02:26:56 15 tobacco raw materials.

02:27:08 16 Q. Let's take batch 1 after a shutdown.

02:27:10 17 You extract the solubles from the fiber in batch

02:27:16 18 1. Do the solubles that were derived from batch

02:27:22 19 1 get reapplied to the fibers that were derived

02:27:22 20 in batch 1?

02:27:30 21 A. You have to look at Park 500 as a

02:27:32 22 continuous process. The fact that you start with

02:27:38 23 a batch in the pulper, every process has to have

02:27:42 24 an origin. That's the origin, but as it says in

02:27:46 25 separating the affidavit it's a continuous process of saving

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02:27:50 2 those things. So is it an instantaneous point in
02:27:54 3 time? To carry it to an extreme, okay, without
02:27:56 4 making it seem overly simplistic, if I have a
02:28:00 5 stem that I'm extracting in the pulper, right,
02:28:04 6 you started in the pulper, the stem goes through
02:28:08 7 the process, it goes on to the stock chest, the
02:28:10 8 machine chest, et cetera, and the solubles
02:28:14 9 portion of that stem goes on an instantaneous
02:28:16 10 basis, is that your question, that the solubles
02:28:20 11 from that get returned to exactly that piece of
02:28:22 12 fiber, the answer is no.

28:30 13 Q. Okay. How about the first batch
02:28:30 14 after a startup?

02:28:32 15 MR. NUNLEY: How about the first
02:28:34 16 batch, what's the question?

02:28:36 17 Q. Do the solubles that are extracted
02:28:38 18 from the first batch get applied to the fiber
02:28:42 19 that was generated from that first batch?

02:28:44 20 A. It would depend on a whole variety of
02:28:46 21 factors.

02:28:48 22 Q. What factors?

02:28:52 23 A. How long did you run base web before
02:28:54 24 you started applying the size.

28:56 25 Q. What do you mean by running base web?

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02:29:02 2 A. We just went through that. When
02:29:04 3 you're starting the paper machine up and you get
02:29:06 4 the paper machine lined out, now you've got, when
02:29:08 5 you have size available now you apply it to the
02:29:12 6 sheet. You've obviously been running fiber for a
02:29:16 7 longer period of time than applying the size to
02:29:16 8 it.

02:29:38 9 There's also an exception to that
02:29:40 10 that's referenced later in the affidavit.

02:29:44 11 Q. What exception are you referring to?

02:29:48 12 A. If you had stored size over the
29:52 13 shutdown period to aid in starting up the line.

02:29:54 14 Q. And in that situation then what would
02:29:56 15 happen?

02:29:58 16 A. You'd put that stored material that
02:30:02 17 had been there for several days on to that base
02:30:04 18 web to facilitate the startup.

02:30:12 19 Q. So you can store size for several
02:30:12 20 days?

02:30:18 21 A. It describes that in here, yes.

02:30:20 22 Q. That's your testimony, you can store
02:30:22 23 size. How long can you store it?

02:30:22 24 A. It's actually not size that's stored,
30:26 25 it's DNCEL. Let me clarify that.

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02:30:28 2 Q. And what's the maximum amount of time
02:30:30 3 that you can store DNCEL?

02:30:36 4 A. It varies, but it's only up to
02:30:36 5 several days, possibly a week.

02:30:46 6 Q. And then after that storage time,
02:30:50 7 assuming the DNCEL hasn't spoiled, it is then
02:30:54 8 used to make size?

02:30:54 9 A. Yes.

02:31:00 10 Q. And then that size that has been
02:31:04 11 stored, let's say, for two days, that size is
02:31:06 12 then applied to the new base web that's coming
31:08 13 through?

02:31:10 14 MR. NUNLEY: Size is not stored,
02:31:12 15 Alex. DNCEL is stored.

02:31:16 16 Q. Okay, let's back up. The DNCEL is
02:31:18 17 stored for, let's say, two days. Generally that
02:31:20 18 period of time it's still usable?

02:31:24 19 A. That's not a normal shutdown, Alex.

02:31:26 20 Q. Okay, but let's take this example. A
02:31:28 21 two-day storage, your understanding is you could
02:31:30 22 still use that DNCEL?

02:31:30 23 A. For startup.

02:31:36 24 Q. Okay. And you've got the DNCEL in a
31:38 25 tank being stored?

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02:31:38 2 A. Yes, sir.

02:31:42 3 Q. Okay. And how long after startup is
02:31:50 4 the time for that DNCEL to be turned into size?

02:31:54 5 A. That can probably be done in an hour.

02:31:56 6 Q. Okay. And then that size is then
02:32:00 7 applied to the new base web that's coming
02:32:00 8 through?

02:32:02 9 A. Correct.

02:32:06 10 Q. And the solubles that were generated
02:32:08 11 to produce the DNCEL that was stored for two
02:32:16 12 days, did they come -- would they come from a
02:32:18 13 different batch of raw materials than the new
02:32:18 14 base web that's coming through?

02:32:22 15 A. Certainly, yes.

02:32:44 16 Q. Let's turn to paragraph 30. In
02:32:46 17 paragraph 30 you state the following: "I've been
02:32:48 18 told that ABC asserts that Philip Morris
02:32:52 19 'commonly adds' solubles from one line to
02:32:56 20 another line in order to compensate for natural
02:33:00 21 variations in the raw tobacco. That again is not
02:33:04 22 true. On rare occasions it will be necessary to
02:33:06 23 transfer some of the solubles from one line at
02:33:10 24 Park 500 to another line. This transfer
02:33:12 25 typically occurs because there has been a problem

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02:33:14 2 in the process that has caused solubles to be
02:33:18 3 discarded on one of the lines, such as the
02:33:20 4 failure of an evaporator or a press that has
02:33:24 5 become clogged. This transfer, moreover, is not
02:33:28 6 at all 'common' and in fact very small quantities
02:33:32 7 of solubles are transferred relative to the total
02:33:36 8 amount of production at Park 500."

02:33:38 9 When you use the word rare in
02:33:46 10 sentence 3, what conception of time, or rather
02:33:48 11 what conception did you have as to the number of
02:33:56 12 instances in which solubles are transferred from
' 33:58 13 one line to another?

02:34:06 14 A. It happens infrequently. I'm not
02:34:08 15 sure I can give you a number.

02:34:12 16 Q. When you say --

02:34:14 17 A. That goes with rare, infrequently.

02:34:18 18 Q. Can you be more specific?

02:34:22 19 A. And give you an actual number? Not
02:34:24 20 off the top of my head. It is not the normal way
02:34:26 21 of operating the plant.

02:34:30 22 Q. And when you say in the final
02:34:34 23 sentence, "This transfer, moreover, is not at all
02:34:36 24 'common' and in fact very small quantities of
' 34:40 25 solubles are transferred relative to the total

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02:34:42 2 amount of production," do you know what the
02:34:46 3 quantities of solubles that are transferred?

02:34:50 4 A. In forms of gallons you mean or --

02:34:52 5 Q. Did you have a volume in mind when

02:34:54 6 you said very small quantities?

02:34:58 7 A. Again, infrequently, again, compared
02:35:00 8 to the total amount of production at Park.

02:35:02 9 Q. What do you mean by the total amount

02:35:04 10 of production? On a daily basis?

02:35:08 11 A. You're producing 150 million pounds a
02:35:12 12 year, roughly, round numbers. That is not the
35:18 13 normal method of producing a product. So I would
02:35:20 14 say it would be a very small percentage of 150
02:35:20 15 million pounds.

02:35:24 16 Q. I see. So your comparison in
02:35:30 17 paragraph 30 is taking the quantities of, rough
02:35:32 18 estimates of the quantities of solubles that have
02:35:38 19 been transferred with the annual production of
02:35:40 20 finished sheet at Park 500, that's the
02:35:40 21 comparison?

02:35:44 22 A. Correct, to the total -- total --
02:35:46 23 total volume of product produced at Park.

02:35:50 24 Q. On an annual basis?

35:52 25 A. Yes.

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02:36:08 2 Q. And you describe in the fourth
02:36:14 3 sentence a scenario that would trigger this type
02:36:16 4 of a transfer, and I'll read it, "This transfer
02:36:18 5 typically occurs because there's been a problem
02:36:22 6 in the process that has caused solubles to be
02:36:24 7 discarded on one of the lines, such as the
02:36:26 8 failure of an evaporator or a press that has
02:36:30 9 become clogged." Is that the only reason you
02:36:34 10 know of for a transfer of liquor between size?
02:36:36 11 And by only I mean a problem in the process that
02:36:40 12 has caused solubles to be discarded on one of the
13 lines?

02:36:54 14 A. I can't think of another example
02:36:54 15 sitting here.

02:37:10 16 Q. What if the soluble content of the
02:37:16 17 DNCEL on one line was too low, meaning below
02:37:20 18 whatever the target soluble level was, would that
02:37:22 19 be a reason for transferring liquor to that
02:37:24 20 line?

02:37:26 21 MR. NUNLEY: Objection. Based on his
02:37:28 22 prior testimony that calls for speculation.

02:37:30 23 MR. ROGERS: I disagree. He said
02:37:32 24 that sitting here he couldn't think of another
13 37:36 25 example. I posed one and I want to see if that

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02:37:40 2 brings to mind another example that he hadn't
02:37:44 3 thought of when he gave the answer "I can't think
02:37:44 4 of another example sitting here."

02:37:48 5 MR. NUNLEY: But you pose it in the
02:37:52 6 framework of a hypothetical. You don't say has
02:37:58 7 that been a reason for transfer. So on that
02:38:00 8 basis it calls for speculation.

02:38:02 9 MR. ROGERS: I'll ask your question.

02:38:04 10 Q. Do you know whether liquor has ever
02:38:08 11 been -- strike that. Do you know whether DNCEL
02:38:10 12 has ever been transferred from one line to
38:14 13 another because the line that was receiving the
02:38:20 14 transfer had low soluble levels in its DNCEL?
02:38:22 15 And by low I mean below the target level?

02:38:28 16 A. Not that I'm aware of. Not that I
02:38:28 17 can recall.

02:38:44 18 Q. Do you know of an instance in which
02:38:46 19 DNCEL was transferred from one line to another
02:38:54 20 not because solubles had been discarded on one
02:38:58 21 line, but simply because an insufficient quantity
02:39:00 22 of solubles had been generated?

02:39:08 23 A. That may have happened. If one of
02:39:10 24 the press lines went down, that's a possibility.

39:18 25 Q. What if -- do you know of an

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02:39:22 2 occurrence when the soluble content of the dry
02:39:26 3 raw materials was sufficiently low that the
02:39:30 4 resulting DNCEL from those dry raw materials did
02:39:34 5 not have the desired level of solubles?

02:39:36 6 A. I'm also unaware of that ever
02:39:38 7 happening or don't recall that ever happening.

02:39:42 8 Q. Do you think James Narron as the
02:39:44 9 plant manager of Park 500 would be in a position
02:39:48 10 to know that?

02:39:50 11 MR. NUNLEY: Speculation.

02:39:50 12 A. I'm not sure.

40:04 13 Q. Would you rely on Mr. Narron to tell
02:40:10 14 you something like that?

02:40:12 15 MR. NUNLEY: Objection as to form.

02:40:22 16 A. I think you have to understand how
02:40:24 17 the plant operates in that particular regard.

02:40:30 18 MR. NUNLEY: His question is, John,
02:40:34 19 if Mr. Narron told you that would you accept that
02:40:36 20 representation from Mr. Narron?

02:40:40 21 A. If Jimmy told me that would I accept
02:40:40 22 that?

02:40:40 23 Q. Sure.

02:41:02 24 A. Sure.

41:04 25 MR. ROGERS: Would you mark this as

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02:41:06 2 Exhibit 15.

3 (Whitman Exhibit 15 for
4 identification, two-page document, production
5 numbers 2025321065 and 2025321066 and PA 127981
6 and PA 127982.)

02:41:08 7 Q. You've just been handed what's been
02:41:32 8 marked as Whitman Exhibit 15, which is a two-page
9 document. The production numbers are 2025321065
10 through 2025321066. The corresponding
11 defendants' production numbers are PA 127981 to
02:41:34 12 PA 127982.

13 Have you ever seen this document
02:41:36 14 before?

02:41:36 15 MR. NUNLEY: For the record, it's
02:41:38 16 stamped confidential.

02:41:40 17 A. Yes, it's familiar to me.

02:41:42 18 Q. When did you have an occasion to see
02:41:42 19 this document?

02:41:52 20 A. I don't really remember, Alex.

02:41:56 21 Q. Would it have been the last month or
02:41:56 22 year?

02:42:04 23 A. It may have been at the time that it
02:42:06 24 was generated. I'm really not sure.

02:42:10 25 Q. Looking at the dates of the

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02:42:14 2 documented transfers, does that help you locate
02:42:16 3 the point in time in which you saw this document?

02:42:24 4 A. Like I say, it could have been at the
02:42:26 5 time that it occurred.

02:42:26 6 Q. You don't know?

02:42:28 7 A. Yeah, I really don't remember.

02:42:30 8 Q. And looking at paragraph 30 of your
02:42:36 9 affidavit, again sentence 3, when you say "On the
02:42:42 10 rare occasions" and then again paragraph, the
02:42:46 11 last sentence of that paragraph, "Very small
02:42:50 12 quantities of solubles are transferred," what did
43:00 13 you rely on in drafting paragraph 30 of your
02:43:00 14 affidavit?

02:43:02 15 A. Just my basic process knowledge and
02:43:04 16 basic experience at Park.

02:43:06 17 Q. Did you look at all at what's been
02:43:14 18 marked as Whitman Exhibit 15?

02:43:22 19 A. I can't recall if I've seen that in
02:43:24 20 the last couple of weeks, really.

02:43:26 21 Q. Okay. And turning to the second page
02:43:30 22 of Whitman Exhibit 15 which is documented liquor
02:43:36 23 transfers from line 1 to lines 2 and 3, appears
02:43:40 24 to be liquor transfers between the dates of
43:48 25 October 26th, 1992 and May 20th, 1993, roughly a

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02:44:06 2 seven-month period. And there appear to be, I
02:44:08 3 haven't counted them, but there appear to be
02:44:10 4 somewhere around 35 or 40 documented liquor
02:44:14 5 transfers on this page from line 1 to lines 2 and
02:44:24 6 3 amounting to a total gallon level of 34,708
02:44:28 7 gallons. Looking at that data in front of you in
02:44:32 8 Whitman Exhibit 15, does that change anything in
02:44:34 9 paragraph 30 of your affidavit?

02:44:34 10 A. No, it doesn't.

02:44:36 11 Q. Why not?

02:44:38 12 A. Because if you take a look, Alex, at
44:44 13 the total amount of pounds there, that's 163,000,
02:44:48 14 round numbers, of pounds of solubles. That's a
02:44:56 15 seven and a half month time frame. The plant
02:44:58 16 probably produced somewhere in the neighborhood
02:45:02 17 of 80 to 85 million pounds of product in that
02:45:06 18 regard. In my opinion, 163,000 is a minor part
02:45:06 19 of that.

02:45:26 20 Q. And looking at the data on that
02:45:30 21 sheet, let's stay on that second page, and
02:45:32 22 thinking of that time frame October 26th, 1992 to
02:45:36 23 May 20th, 1993, do you know specifically the
02:45:38 24 reason for any of these transfers?

02:45:42 25 A. Honestly I don't. No, I do not.

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02:45:46 2 Q. So you wouldn't know whether they're
02:45:50 3 all attributable to solubles being discarded on
02:45:52 4 either lines 2 or 3?

02:45:56 5 A. Correct, without having further
02:45:56 6 information.

02:46:02 7 Q. But the only scenarios in which you
02:46:04 8 know of liquor transfers are described in
02:46:06 9 paragraph 30 of your affidavit?

02:46:06 10 A. Yes, sir.

02:47:20 11 Q. Have you seen any documents that look
02:47:24 12 like Whitman Exhibit 15, other time periods of
47:28 13 documented liquor transfers, or is this the only
02:47:30 14 such document that you've seen?

02:47:34 15 A. I can't really recall.

02:47:38 16 Q. Do you know whether documents
02:47:42 17 containing information on documented liquor
02:47:44 18 transfers are generated on a regular basis?

02:47:52 19 A. I really don't know.

02:47:54 20 Q. Do you know who's in charge today of
02:47:58 21 overseeing liquor transfers when they occur?

02:48:04 22 A. It would normally either be the shift
02:48:10 23 coordinator or the supervisors on the respective
02:48:10 24 lines.

48:14 25 Q. And as the general manager of the

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02:48:16 2 Richmond processing plants, do you receive
02:48:22 3 documents that record liquor transfers?

02:48:26 4 A. No, sir, I do not.

02:48:36 5 MR. ROGERS: Would you mark this as
02:48:52 6 Exhibit 16.

7 (Whitman Exhibit 16 for
8 identification, two-page document, production
9 numbers 2024411266 and 2024411267 and PA 198696
10 and PA 198697.)

02:49:06 11 Q. You've just been handed what's been
02:49:28 12 marked as Whitman Exhibit 16, which is a two-page
13 document, production numbers 2024411266 through
14 2024411267. Defendants' production numbers are
02:49:30 15 PA 198696 through PA 198697. This appears to be
02:49:36 16 a document from L.M. Alexander to Mr. J.M.
02:49:36 17 Whitman. The date on the document is January
02:49:40 18 15th, 1990. Do you recall receiving --

02:49:42 19 A. I'm sorry, that's not the date on
02:49:42 20 what I have.

02:49:54 21 Q. I apologize.

02:49:54 22 A. No problem.

02:50:04 23 MR. ROGERS: Chip, do you have the
02:50:06 24 October 16th date on yours?

02:50:06 25 MR. NUNLEY: Yes.

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02:50:08 2 MR. ROGERS: I apologize.

02:50:08 3 MR. NUNLEY: For the record I note
02:50:10 4 that it's designated as trade secret.

02:50:12 5 MR. ROGERS: Let me read again the
02:50:14 6 production numbers because I had a different
02:50:16 7 document in front of me.

02:50:22 8 Q. The production numbers are 2024411321
02:50:28 9 to 2024411322 and defendants' numbers are PA
02:50:34 10 198748 to PA 198749. The date of the document is
02:50:38 11 October 16th, 1989. I appreciate your calling
02:50:40 12 that to my immediate attention.

50:42 13 A. No problem.

02:50:42 14 Q. Do you recall receiving this
02:50:42 15 document?

02:50:48 16 A. The specific document, no, but did I
02:50:50 17 get a weekly production report during that time
02:50:52 18 period? Yes.

02:50:54 19 Q. And during this time period am I
02:50:56 20 right that you were the site manager at Park 500?

02:50:56 21 A. That is correct.

02:51:00 22 Q. And who is L.M. Alexander?

02:51:06 23 A. Linda Alexander was the -- yeah, at
02:51:10 24 that time was the secretary to the operations
02:51:10 25 manager.

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02:51:18 2 Q. And at the time who was the
02:51:20 3 operations manager, October of 1989?

02:51:38 4 A. I need a minute to think. Tom White.

02:51:40 5 Q. Is he still the operations manager?

02:51:42 6 A. No, he is not.

02:51:48 7 Q. If I can direct your attention to
02:51:52 8 two-thirds of the way down this first page, right
02:51:56 9 under the words line 1 there appears to be
02:51:58 10 entries for specific dates. I guess this is the
02:52:04 11 week preceding in terms of -- this is the
02:52:08 12 production report, rather for the week ending
52:12 13 October 15th. On October 9th, on line 1 it says
02:52:16 14 "3.6" and then there's a dash, "ran base web to
02:52:20 15 generate liquor." Does the 3.6 refer to 3.6
02:52:20 16 hours?

02:52:24 17 A. My recollection is that's correct.
02:52:26 18 It's hours of downtime.

02:52:28 19 Q. Would you describe what you mean by
02:52:30 20 hours of downtime?

02:52:34 21 A. The line was not producing product at
02:52:40 22 that point in time is my recollection of what
02:52:40 23 that is.

02:52:46 24 Q. So for 3.6 hours on October 9th no
52:52 25 finished RL sheet was coming off line 1?

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02:52:58 2 A. That's my interpretation of this
02:52:58 3 data, yes.

02:53:04 4 Q. Okay. For those 3.6 hours is it
02:53:12 5 correct that Philip Morris ran base web to
02:53:14 6 generate liquor?

02:53:22 7 A. My recollection is we ran base web in
02:53:28 8 order to build the liquor levels to specify the
02:53:28 9 levels.

02:53:36 10 Q. And what happens to the base web
02:53:38 11 that's being "run" at this time?

02:53:40 12 A. This time period that this document
02:53:44 13 was generated refers also to a specific part of
02:53:48 14 the affidavit in which there were periods during
02:53:50 15 that time when we were putting in the total
02:53:52 16 quality management system and we were trying to
02:54:00 17 reduce the variation, and in my opinion, we took
02:54:02 18 that a little bit too far. We tried to get the
02:54:06 19 variation in the finished product down to a very
02:54:10 20 low level. So you needed very specific
02:54:14 21 quantities of liquor to be able to accomplish
02:54:18 22 that. We were not accepting the wide range that
02:54:20 23 you see in the affidavit relative to the finished
02:54:30 24 sheet soluble specification. So at those points
02:54:32 25 in time that we couldn't hit a very narrow range,

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02:54:34 2 they were in base web until they got the levels
02:54:36 3 up to a point that would permit them to do that.

02:54:40 4 Q. Your description in the affidavit of
02:54:44 5 a range between 41 percent and 49.5 percent you
02:54:54 6 would describe that as a wide range?

02:54:56 7 A. I'd characterize that as the
02:54:56 8 specification range.

02:55:00 9 Q. And would you say that specification
02:55:02 10 range is wide or narrow?

02:55:08 11 A. That's the accepted range. What we
02:55:10 12 were trying to do at the time with our newly
' 55:14 13 implemented ^{SPC} ~~SBC~~ system was to try to control that
02:55:14 14 within a very narrow range.

02:55:20 15 Q. How narrow?

02:55:22 16 A. Instead of the plus or minus
02:55:24 17 approximately 4 percent that's in there, my
02:55:28 18 recollection, Alex, tells me we were shooting for
02:55:30 19 somewhere plus or minus one.

02:55:32 20 Q. Were you able to achieve that?

02:55:34 21 A. Not without causing significant
02:55:36 22 operational problems.

02:55:40 23 Q. And to what are you referring
02:55:42 24 specifically when you say specific operational
' 55:44 25 problems?

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02:55:46 2 A. Because the liquid levels fluctuate
02:55:52 3 in a continuous process, in order to keep it that
02:55:54 4 very narrow range there were times when there
02:55:58 5 were inadequate amounts of solubles available to
02:56:02 6 do that and we took the alternative of running
02:56:04 7 base web till the levels got back up.

02:56:12 8 Q. And the base web that is run during
02:56:16 9 this time, excuse me, is then returned to the
02:56:18 10 pulper as broke?

02:56:22 11 A. That's the general way that the plant
02:56:26 12 runs. At times during this time frame there was
56:28 13 sufficient base web generated that that would
02:56:32 14 have caused even more process variation, so that
02:56:36 15 product would have been trashed.

02:56:44 16 Q. And would you -- is it your
02:56:48 17 testimony, earlier you said "Not without" -- I
02:56:52 18 asked you were you able to achieve the narrower
02:56:54 19 range that you were describing and you said, "Not
02:56:56 20 without causing significant operational
02:57:00 21 problems." Is this entry on October 9th running
02:57:02 22 base web to generate liquor, would you describe
02:57:04 23 that as a significant operational problem?

02:57:06 24 A. Yes, I would.

57:08 25 Q. And why would you describe it as

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02:57:08 2 such?

A. Because you're creating downtime

02:57:14 4 which is a significant operational problem.

02:57:18 5 Q. Is this operation, running base web

02:57:20 6 to generate liquor, does it also have the effect

02:57:22 7 of lowering yield?

A. Yes, it would.

Q. How would it have that effect?

A. You're sending tobacco materials

02:57:36 11 through from the start of the process but you're

02:57:38 12 not getting finished product out at the end of

' 57:42 13 the process. Therefore, the amount of pounds of

02:57:46 14 finished good material would be lower, the yield

02:57:46 15 would be lower.

02:58:02 16 Q. How often is a yield calculation
made?

A. It's reported on a monthly basis.

02:58:14 18 Q. Do you know whether yield's measured
02:58:16 19 every day and then placed in that monthly report?

02:58:20 20 A. I really don't recall.

02:58:24 21 Q. Is all the base web that was run
02:58:30 22 during this time returned to the pulper?

02:58:32 23 A. No, my recollection is that some of
02:58:36 24 that material was actually discarded.

' 58:38 25

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02:58:42 2 Q. And by discarded you mean land
02:58:42 3 filled?

02:58:42 4 A. Yes.

02:58:46 5 Q. And so there's where you would have
02:58:48 6 the reduction in yield?

02:58:48 7 A. That's correct.

02:58:56 8 Q. Roughly how many times, instances,
02:59:02 9 not hours, but instances can you recall when the
02:59:06 10 plant was not producing -- a line was not
02:59:08 11 producing finished sheet because you were running
02:59:10 12 base web to generate liquor?

59:12 13 A. I really can't give you a number for
02:59:16 14 that. It was frequent enough that from an
02:59:20 15 operational standpoint it convinced us that it
02:59:24 16 was not the proper control technology to be
02:59:28 17 using, that we should go back to accepting the
02:59:30 18 full range that's listed in the affidavit.

02:59:34 19 Q. Okay. And so the record is clear on
02:59:40 20 this, during this 3.6 hours raw materials are
02:59:44 21 inserted into the pulper, the solubles are
02:59:46 22 extracted from the fibrous material; is that
23 correct?

02:59:48 24 A. The process is the same, right.

59:50 25 Q. Everything is the same except that

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02:59:56 2 the fibrous material that is ultimately made into
02:59:56 3 base web is discarded?

02:59:58 4 MR. NUNLEY: No, objection. He said
03:00:02 5 goes

at times it going to the broke pulper, at times
03:00:04 6 it's discarded and he doesn't know one way or the
03:00:06 7 other with respect to this 3.6 hours.

03:00:08 8 Q. Okay. But you did testify earlier
03:00:10 9 that you knew of instances when it was discarded
03:00:12 10 and I want to talk about those instances, whether
03:00:14 11 it was October 9th on line 1 or some other
03:00:16 12 instance that you have in mind in which that
00:18 13 happened.

03:00:18 14 A. Okay.

03:00:20 15 Q. Just so I understand how the process
03:00:24 16 worked. Everything worked the same, the
03:00:28 17 insertion of raw materials into the pulper and
03:00:30 18 the processing, the only thing that was different
03:00:32 19 was at the end of the line the base web that was
03:00:34 20 generated from those dry raw materials was
03:00:40 21 discarded and the liquor that was generated was
03:00:42 22 stored in a tank; is that correct?

03:00:48 23 A. As long as it's with the stipulation
03:00:50 24 that some of it would have been discarded,
00:52 25 right. At times it was, at times it would have

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03:00:54 2 been fed back to the broke pulper.

03:00:56 3 Q. Right. I'm only asking about

03:00:58 4 whatever instance you remember when base web was

03:00:58 5 landfilled?

03:01:00 6 A. Yeah, there were times when that

03:01:00 7 happened.

03:01:04 8 Q. And the liquor was then stored in the

03:01:06 9 DNCEL storage tank?

03:01:08 10 A. The process -- the other parts of the

03:01:12 11 process would have been exactly the same, yes.

03:01:26 12 Q. What was the time frame when you were

01:32 13 pursuing a narrower range in the solubles, do you

14 recall?

03:01:34 15 A. I can't give you the specific dates,

03:01:34 16 I really don't recall, but I want to tell you it

03:01:40 17 was basically the late third quarter, early

03:01:46 18 fourth quarter of 1989, but that's really from --

03:01:46 19 from memory banks.

03:01:52 20 Q. And do you remember what that narrow

03:01:54 21 range was? If the range today as you described

03:02:00 22 it is roughly 4, 4.5, plus or minus, what do you

03:02:02 23 recall that narrow range being?

03:02:04 24 A. My recollection was it was plus or

02:04 25 minus one.

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03:02:08 2 Q. Do you know who made the decision to
03:02:08 3 try to pursue a narrow range?

03:02:14 4 A. I want to -- yeah, it was Bill
03:02:16 5 Poorbaugh and Tom White.

03:02:20 6 Q. And who made the decision to
03:02:24 7 discontinue the effort to achieve that narrow
03:02:26 8 range?

03:02:26 9 A. I did.

03:02:28 10 Q. And what were the grounds upon which
03:02:30 11 you made that decision?

03:02:34 12 A. There was no reason from a
02:36 13 specifications standpoint to keep on continuing
03:02:42 14 to achieve what I would consider to be a more
03:02:46 15 idealistic finished product at the expense of
03:02:48 16 reasonable business operations when that
03:02:52 17 acceptable specification range was the 8 percent,
03:02:54 18 8.5 percent that you just referred to.

03:03:00 19 Q. And when you just said "There was no
03:03:04 20 reason from a specification standpoint," what did
03:03:04 21 you mean?

03:03:06 22 A. That you have that range of 41.5
03:03:12 23 to -- excuse me, 41 to 49.5, 42 to 50.5, those
03:03:14 24 are the acceptable -- that is the acceptable
03:16 25 specification for the two RL products.

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03:03:22 2 Q. And so you're saying from a business
03:03:24 3 standpoint it wasn't worth whatever the expense
03:03:28 4 was to you in making this cost/benefit analysis,
03:03:30 5 it wasn't worth the extra expense to achieve a
03:03:32 6 more narrow range?

03:03:34 7 A. That's correct, because the wider
03:03:34 8 range was subjectively acceptable.

03:03:42 9 Q. And the expense from the business
03:03:44 10 standpoint you measured in yield loss?

03:03:50 11 A. Loss of productivity, in downtime and
03:03:54 12 in yield loss because obviously, when you're not
03:56 13 running finished sheet you're not making finished
03:04:00 14 product, that's a loss in productivity as well as
03:04:00 15 a loss in yield.

03:04:04 16 Q. What's the difference between
03:04:04 17 productivity and yield loss?

03:04:08 18 A. Okay. If I have 3.6 hours downtime,
03:04:10 19 we've already discussed the yield, I think,
03:04:16 20 right, so if I have 3.6 hours of downtime and I
03:04:20 21 could have been making acceptable finished
03:04:24 22 product at the given production rate, whatever
03:04:28 23 that happens to be, then I've just lost the
03:04:30 24 opportunity to make 3.6 hours of acceptable
04:34 25 finished product. So that's the other cost

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03:04:36 2 that's associated with that. It's not just a
03:04:38 3 yield loss.

03:04:42 4 Q. I see. If you'll turn the page, the
03:04:46 5 first entry on the top under line 2 for October
03:04:52 6 9th, "2.2 base web to packing, no DN." What do
03:04:54 7 you understand that to mean?

03:04:58 8 A. It's basically the same situation as
03:05:02 9 the listing on October the 9th on line 1.

03:05:06 10 Q. What does the expression base web to
03:05:06 11 packing mean?

03:05:08 12 A. They would have sent the base web
05:12 13 directly to the packers, the same place that we
03:05:16 14 would send finished sheet to. And my
03:05:20 15 interpretation of that would be that they sent it
03:05:24 16 there strictly from the ease of handling
03:05:24 17 standpoint.

03:05:28 18 Q. And where would it go from the
03:05:30 19 place --

03:05:32 20 A. From the packers.

03:05:32 21 Q. From the packers?

03:05:36 22 A. From the packers it could go to
03:05:38 23 either place, back to the broke pulper or to
03:05:38 24 landfill.

05:56 25 Q. When we talked yesterday about broke

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03:06:00 2 that includes the base web that's referenced in
03:06:02 3 this document, your understanding of this base
03:06:08 4 web that was generated on these -- on this date,
03:06:10 5 that would qualify in your mind as broke?

03:06:12 6 A. Yes, sir.

03:06:18 7 Q. And any sheet, any finished sheet
03:06:22 8 that didn't meet the specification range would
03:06:24 9 then also qualify as broke?

03:06:28 10 A. Only if it's outside certain limits.

03:06:32 11 Q. And by certain limits do you mean the
03:06:32 12 range that's provided in your affidavit?

06:38 13 A. No, not -- could; might not. Let me
03:06:48 14 see if I can clarify it for you. And it's hard
03:06:54 15 without having the exact numbers. But let me
03:06:58 16 give you a for instance and use it only in that
03:07:02 17 particular vein, please. Let's say that the
03:07:16 18 lower solubles limit of 41 -- that's a bad
03:07:20 19 example. I'm trying to think of something with a
03:07:24 20 very tight control range. Let's take moisture
03:07:30 21 content. Let's say that the specified moisture
03:07:34 22 content is 14 percent plus or minus 1.5. I'm
03:07:38 23 using it strictly as an example. Please don't
03:07:40 24 take the numbers as an absolute.

07:40 25 Q. Okay.

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03:07:44 2 A. If it falls outside of that range of
03:07:50 3 14 plus or minus 1.5, if it's outside of that
03:07:58 4 range by within 1 percent, in other words, 14
03:08:08 5 plus 1.5 would be 15.5, if it's within 15.5 to
03:08:12 6 16.5 percent, we would blend that material back
03:08:16 7 in with acceptable product when the moisture
03:08:20 8 content was running on the low side. If it's
03:08:22 9 outside, however, of that range, outside of that
03:08:32 10 14, 15,.5, 16.5, if it's greater than 16.5 then
03:08:32 11 that would go to broke, yes.

03:08:36 12 Q. And that's regardless of the soluble
08:38 13 content of that sheet?

03:08:42 14 A. Correct. Each individual parameter
03:08:44 15 has its own limits.

03:08:46 16 Q. So the soluble content could be dead
03:08:50 17 on in terms of the target range and because of
03:08:52 18 this --

03:08:54 19 A. Moisture content.

03:08:56 20 Q. -- moisture content issue that
03:09:00 21 paper rather ^{that} ~~than~~ finished sheet would go back to
03:09:00 22 the pulper?

03:09:04 23 A. That's -- yeah, absolutely possible,
03:09:06 24 and each one of those parameters has its own
09:06 25 specified range.

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03:09:12 2 Q. Okay. So broke would include
03:09:14 3 finished sheet that has a soluble content outside
03:09:16 4 the target range?

03:09:16 5 A. Could, could.

03:09:20 6 Q. Broke could include finished sheet
03:09:24 7 that has a moisture level outside the target
03:09:30 8 range. What other parameters would have to be --
03:09:32 9 any other parameters that would render finished
03:09:34 10 sheet broke?

03:09:38 11 A. Any of the other humectants, flavor,
03:09:40 12 additives or preservatives.

09:46 13 Q. How about the alkaloid content?

03:09:50 14 A. No, don't measure the alkaloid
03:09:50 15 content.

03:09:54 16 Q. I showed you a document that I marked
03:09:58 17 as an exhibit yesterday that measured alkaloid
03:10:04 18 content of RLB and RLTC. Did you understand that
03:10:08 19 to be a measurement of the alkaloid content of
03:10:08 20 the finished sheet?

03:10:12 21 A. Sure, but it's not a routine
03:10:16 22 analytical test done by the Park 500 QA
03:10:28 23 laboratory. It's not one of the specifications.

03:10:30 24 Q. I see, so when you said earlier no,
10:34 25 don't measure the alkaloid content, you were

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03:10:36 2 referring to Park 500 doesn't measure the
03:10:38 3 alkaloid content?

03:10:38 4 A. When we were talking about things
03:10:42 5 that you asked me the question on whether I would
03:10:44 6 reject or accept sheet on that particular basis
03:10:48 7 and that's not one of the analytical tests
03:10:52 8 performed at Park 500. It's not one of the
03:10:56 9 specifications for the finished sheet at Park
10 500.

03:11:02 11 Q. So you wouldn't know then whether
03:11:04 12 your finished sheet had an alkaloid content
11:12 13 within the expected range that you identified
03:11:14 14 yesterday of roughly 1.0 to 1.3?

03:11:16 15 MR. NUNLEY: Well, objection to the
03:11:22 16 extent there's any attempt to correlate "expected
03:11:24 17 range" to process specifications. He testified
03:11:26 18 yesterday about what he would expect to see in
03:11:30 19 finished sheet. It's never been identified as a
03:11:30 20 process spec.

03:11:32 21 MR. ROGERS: I understand that.

03:11:34 22 Q. You said yesterday the expected range
03:11:40 23 was 1.0 to 1.3. And now you said today that at
03:11:44 24 Park 500 you don't test the alkaloid content of
11:48 25 finished sheet. Are you aware of any time in

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03:11:50 2 which the alkaloid content of finished sheet was
03:11:52 3 tested by Park 500?

03:11:56 4 A. No, I'm not.

03:12:00 5 Q. So my question to you is because you
03:12:04 6 don't test the alkaloid content of the finished
03:12:08 7 sheet you wouldn't know whether the alkaloid
03:12:14 8 content of the finished sheet on a given day was,
03:12:16 9 say, 1.5?

03:12:18 10 A. No, I would have no idea of that.

03:12:20 11 Q. Nor would you know if the finished
03:12:24 12 sheet on one given day had an alkaloid content of
12:26 13 .5?

03:12:28 14 A. No, I would not.

03:12:32 15 MR. ROGERS: Why don't we take five
03:12:32 16 minutes.

03:12:32 17 THE WITNESS: Good idea.

03:12:34 18 THE VIDEO OPERATOR: We're going off
03:12:38 19 the record. The time on the screen is 3:12:46.
03:25:36 20 This ends videotape number 7.

03:25:40 21 (A recess was taken.)

03:25:52 22 THE VIDEO OPERATOR: This is
03:25:54 23 videotape number 8, the continuation of the
03:26:00 24 deposition of John Whitman. Today is August
26:04 25 15th, 1995. The time on the screen is 3:26:15.

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03:26:06 2 You're on the record.

03:26:08 3 Q. Earlier today, Mr. Whitman, I made
03:26:10 4 reference to your testimony from yesterday about
03:26:18 5 a tobacco extract in 1976 that was used during a
03:26:22 6 30-day production cycle. I promised you I'd
03:26:26 7 locate the cite and I have and I want to just
03:26:30 8 come back to that briefly. It's Page 90 to 91 of
03:26:36 9 your testimony. I asked you on line 14 of Page
03:26:38 10 90: "Do you know whether Philip Morris has ever
03:26:42 11 purchased tobacco extract that contains nicotine
03:26:46 12 from an outside supplier?" Your answer is "One,
' 26:48 13 one occasion." My question is "What's the
03:26:50 14 occasion that you're aware of?" Your answer was
03:26:52 15 "There was a tobacco extract the chemical nature
03:26:54 16 of I really don't know anything about that was
03:27:00 17 used in a 30-day production cycle at Park before
03:27:02 18 I ever transferred down there."

03:27:02 19 Q. And when you say one occasion,
03:27:04 20 do you mean one single purchase?

03:27:06 21 A. Oh, I can't answer the question
03:27:08 22 from a purchasing standpoint, only from a
03:27:10 23 production standpoint.

03:27:14 24 Q. And can you recall roughly when
' 27:16 25 that 30-day production cycle may have been?

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03:27:18 2 "A. I want to tell you it was 1976,
03:27:22 3 but again, I wasn't there at the time that it was
03:27:24 4 produced so that's a real guess."

03:27:28 5 Q: How did you know about this 30-day
03:27:32 6 production cycle in which a tobacco extract that
03:27:38 7 contained nicotine was used in production at Park
8 500?

03:27:44 9 A. I know that a tobacco extract was
03:27:48 10 used. Again, I would refer to you that I don't
03:27:52 11 know what the chemical composition of that was.
03:27:54 12 But going back to the time period in question,
28:00 13 there were two sources that I ^{learned of} ~~went into~~ that
03:28:02 14 from. The first one would have been at the time
03:28:12 15 that I was at R&D and we were doing filling power
03:28:20 16 studies on RL and then the other time would have
03:28:28 17 been in reviewing inventory figures on RL
03:28:32 18 materials after I did transfer down to Park 500.

03:28:44 19 Q. The issue of a tobacco extract in RL
03:28:48 20 came up in the context of what you call "filling
03:28:50 21 power studies"?

03:28:52 22 A. Yes.

03:28:52 23 Q. Do I have that right?

03:28:52 24 A. Yes.

28:54 25 Q. What's a filling power study?

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03:29:00 2 A. It's -- I'm trying to think how to
03:29:04 3 explain it without sounding too technical. It's
03:29:06 4 what the ability of the specific component would
03:29:08 5 have to fill a cigarette rod.

03:29:16 6 Q. And so the presence of a tobacco
03:29:20 7 extract would affect --

03:29:20 8 A. No, it had nothing --

03:29:22 9 MR. NUNLEY: John, let him finish.

03:29:26 10 A. Excuse me. Rephrase.

03:29:28 11 Q. So the presence of a tobacco extract
03:29:34 12 would affect the filling power of RL?

03:29:38 13 A. I really don't know the answer to
03:29:38 14 that question.

03:29:48 15 Q. The second instance you identified
03:29:52 16 was when you're reviewing inventory figures on RL
03:29:54 17 materials "after I did transfer down to Park
03:29:58 18 500." Do you know roughly what time frame that
03:30:00 19 would have been when you were reviewing inventory
03:30:00 20 figures on RL materials?

03:30:08 21 A. I'm going to tell you, Alex, it was
03:30:12 22 sometime in late '77 and that is strictly a
03:30:12 23 guess.

03:30:16 24 Q. And listed on those inventory figures
03:30:18 25 that you saw was a tobacco extract?

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03:30:26 2 A. No, no, no. There was a small
03:30:30 3 quantity of the HRL product that was produced
03:30:34 4 from that, the RL product that was produced from
03:30:36 5 that that was still in inventory.

03:30:42 6 Q. I'm sorry, did you misspeak when you
03:30:42 7 said HRL?

03:30:46 8 A. That was -- RL.

03:30:50 9 Q. Okay. Has there ever been a term
03:30:50 10 called HRL product?

03:30:52 11 A. Yes.

03:30:56 12 Q. What is HRL? What was HRL?

03:30:58 13 A. HRL was the original Park 500 product
03:31:04 14 from the time they started up. Just like, for
03:31:06 15 example, you have RL150-B, HRL was the first
03:31:08 16 product when they started up.

03:31:10 17 Q. And when we were talking earlier,
03:31:14 18 just before the break about the specification
03:31:16 19 range, consideration of whether or not to narrow
03:31:20 20 the specification range of the finished RL sheet
03:31:30 21 in the late 1989/early '90 period within the
03:31:32 22 specification range you described in your
03:31:36 23 affidavit, let's take the RLB of 41 to 49.5
03:31:40 24 percent, is there a target figure within that
03:31:42 25 range, meaning the middle of that range so it

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03:31:50 2 would be, say, roughly 44.5 or 45 percent, is
03:31:52 3 that the middle of the range I guess?

03:31:56 4 A. Somewhere in the -- in the middle.

03:31:58 5 The exact number escapes me, but yeah, the target

03:32:00 6 would be there. We did not attempt to narrow the

03:32:04 7 specification range, if I might clarify how you

03:32:06 8 phrased that question at the start.

03:32:06 9 Q. How would you describe it?

03:32:08 10 A. We tried to narrow the variation

03:32:10 11 within the process.

03:32:12 12 Q. I see. So the target, let's say
32:16 13 44/45 stayed the same, it was the range on either
03:32:18 14 end, either above or below that you were
03:32:20 15 considering narrowing?

03:32:20 16 A. Yes, sir.

03:32:28 17 Q. During the course of your tenure at
03:32:30 18 Philip Morris, do you know whether the target
03:32:38 19 level for the finished RL sheet has changed?

03:32:40 20 A. For what?

03:32:42 21 Q. Let's take RLB.

03:32:44 22 A. No, no, for what parameters?

03:32:52 23 Q. I'm sorry, for the soluble levels.

03:32:58 24 A. Has that target ever changed for RLB
33:00 25 or?

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03:33:02 2 MR. NUNLEY: Let me just ask a
03:33:04 3 clarification. When you say target level are you
03:33:06 4 talking about the spec or are you talking about a
03:33:08 5 single number?

03:33:12 6 MR. ROGERS: I'm talking about the
03:33:12 7 single number in between the specification range
03:33:14 8 that we've been talking about.

03:33:18 9 Q. You indicated that that middle number
03:33:20 10 is called the target and then there's a range; is
11 that right?

03:33:20 12 A. Correct.

13 Q. Okay, and my question is do you know
03:33:30 14 whether at any time the target level has changed?

03:33:40 15 A. Not to my recollection, but that's --
03:33:44 16 that's straining the memory banks for a number of
03:33:46 17 years.

03:33:48 18 Q. Let me ask you to turn in your
03:33:54 19 affidavit to Page 11 towards the bottom of which
03:33:58 20 is the subheading "The use of recycled water" and
03:34:06 21 then starts with paragraph 24. And you'll see it
03:34:12 22 goes 24, 25 still within the subheading. I want
03:34:14 23 to ask you about paragraph 26 which starts on the
03:34:18 24 bottom of Page 12. I just wanted to orient you
03:34:18 25 in your affidavit.

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03:34:22 2 Paragraph 26 says as follows: "I am
03:34:26 3 aware of ABC's assertion that the use of RBW and
03:34:28 4 WEL 3 'increases the total amount of nicotine' in
03:34:32 5 a given batch of tobacco materials. That is also
03:34:34 6 false. The use of WEL 3 and RBW does not add
03:34:38 7 nicotine to the reconstituted tobacco. The
03:34:40 8 recycled water system is in a state of
03:34:44 9 equilibrium; each 'batch' of tobacco materials
03:34:48 10 that goes through the continuous and closed RL
03:34:54 11 process gives up," underlined, "WEL 3 and RBW at
03:34:58 12 least equivalent to the WEL 3 and RBW that it
03:35:00 13 receives during the process. The same is true of
03:35:04 14 SBW. No extraneous nicotine is introduced at any
03:35:08 15 point." What did you mean by the word extraneous
03:35:10 16 in the last sentence of paragraph 26?

03:35:14 17 A. No additional, no outside source.

03:35:16 18 Q. And by outside source you mean

03:35:18 19 outside of Park 500?

03:35:20 20 A. External to the raw materials used at
03:35:22 21 Park 500.

03:35:26 22 Q. And the term you use in the top of
03:35:30 23 Page 13, still in paragraph 26, "A state of
03:35:34 24 equilibrium," is that a term of art within Park
03:35:38 25 500?

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03:35:36 2 A. We've talked about it on several
03:35:42 3 occasions during the conversation. It's a term
03:35:46 4 commonly referred to within continuous processes
03:35:54 5 in which the process has achieved a steady state
03:35:54 6 operation.

03:36:06 7 Q. And when you say still in that
03:36:12 8 sentence that "each batch of tobacco materials
03:36:14 9 that goes through the continuous and closed RL
03:36:18 10 process gives up WEL 3 and RBW at least
03:36:24 11 equivalent to the WEL 3 and RBW that it receives
03:36:26 12 during the process," what did you mean by "at
36:28 13 least equivalent"? Are there instances in which
03:36:28 14 there's more?

03:36:32 15 A. There could be from evaporator losses
03:36:34 16 and so on and so forth. That's the exact reason
03:36:38 17 why you have to add fresh water, in that there's
03:36:42 18 not a perfect balance of the water that you put
03:36:44 19 into the pulper, if that were not the case, you
03:36:48 20 would not have to add any fresh water.

03:36:58 21 Q. I guess what I'm thinking of is if
03:37:06 22 one batch gives up more WEL 3 and RBW than it
03:37:24 23 received, is that possible?

03:37:24 24 MR. NUNLEY: You can answer if you
37:26 25 understand the question.

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03:37:30 2 A. Yeah, I mean in other words again
03:37:34 3 you're not in a perfect flat line. There's
03:37:36 4 variation within the process. So is it
03:37:42 5 possible? Certainly. Evaporator losses and so
03:37:48 6 forth, one batch could lose more than another
03:37:48 7 batch could.

03:37:52 8 Q. Is it likewise also the case that one
03:37:54 9 batch could gain more than it would lose? By
03:38:00 10 more I mean more WEL 3 than RBW?

03:38:02 11 A. It can't gain more. It's got to lose
03:38:04 12 some. Some batches are going to lose more than
38:04 13 others.

03:38:14 14 Q. When you refer to giving up WEL 3 and
03:38:18 15 RBW at least equivalent in paragraph 26, are you
03:38:22 16 referring to a volume level when you're talking
03:38:24 17 about at least equivalent to?

03:38:28 18 A. Yeah, I would say that's accurate.

03:38:32 19 Q. A volume level of WEL 3 and RBW?

03:38:32 20 A. Correct.

03:38:56 21 Q. I want to switch topics and talk to
03:39:00 22 you about the ART process, we've referred to it a
03:39:04 23 few times during the course of the last two days,
03:39:14 24 and your reaction to the denicotinized
39:18 25 cigarette. When did you first get involved in

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03:39:18 2 the ART process?

03:39:24 3 A. From an actual process standpoint?

03:39:28 4 When I came back to Richmond at the end of '89.

03:39:30 5 Q. And what was happening at that time

03:39:34 6 with respect to the ART process?

03:39:36 7 MR. NUNLEY: Objection as to form.

03:39:40 8 A. Can you --

03:39:40 9 Q. What was the state of the ART program
03:39:46 10 at that time? At what stage was it?

03:39:52 11 A. Let me see if I can clarify your
03:39:56 12 question. You mean what state was the plant in
' 39:56 13 at that point? Were we operating, not operating
03:39:58 14 or --

03:40:00 15 Q. Yes.

03:40:02 16 A. The plant was in an operational mode
03:40:04 17 in October of 1989 when I returned from New York.

03:40:10 18 Q. And when you say operational mode you
03:40:16 19 mean that the plant was producing denicotinized
03:40:18 20 cigarettes for commercial sale?

03:40:20 21 A. For use in test markets, that's
22 correct.

03:40:22 23 Q. Do you know the test markets that it
03:40:30 24 was used in?

' 41:02 25 A. I really don't remember, Alex.

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03:41:04 2 MR. ROGERS: Would you mark this as
03:41:04 3 Exhibit 17.

4 (Whitman Exhibit 17 for
5 identification, document entitled "Richmond
6 processing plants manufacturing plan, 1990 to
7 1995," production numbers 2030878610 through
8 2030878791 and PA 802863 through PA 803044.)

03:41:18 9 Q. Mr. Whitman, you've just been handed
03:41:22 10 what's been marked as Whitman Exhibit 17, which
03:41:52 11 is a document the top of which says "Richmond
12 processing plants manufacturing plan, 1990 to
13 1995." Production numbers are 2030878610 through
14 2030878791. The corresponding defendant
15 production numbers are PA 802863 through PA
03:41:56 16 803044. On the front page appears your name,
03:41:58 17 J.M. Whitman towards the lower right-hand
03:42:00 18 corner.

03:42:02 19 Have you ever seen this document
03:42:26 20 before?

03:42:28 21 MR. NUNLEY: The document that's been
03:42:32 22 introduced as Whitman number 17 bears the
03:42:34 23 designation trade secret.

03:42:48 24 A. I remember seeing the document,
03:42:50 25 Alex. Do I remember all the content of it?

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03:42:52 2 Obviously no.

03:42:58 3 Q. Okay. If you'll just skip ahead to
03:43:00 4 the second page of the document, rather, I'm
03:43:06 5 sorry, the third page, you'll see a table of
03:43:14 6 contents, and I'm on PA 802865. Are you on that
03:43:14 7 page?

03:43:14 8 A. Yes.

03:43:16 9 Q. And the table of contents item number
03:43:20 10 ^{plans} 2 is processing ~~plants~~ and then you'll see the
03:43:24 11 letters A through F naming different processing
03:43:30 12 plants. And you'll see the entry for Bermuda
43:34 13 Hundred is letter D. I'm going to ask you to
03:43:38 14 turn to the page II-D-1, and the production
03:43:42 15 number is easier, or it may not be, to get to
03:43:50 16 that page is PA 802944. Are you there?

03:43:52 17 A. Yes, sir.

03:44:00 18 Q. This page appears to describe the
03:44:02 19 "mission" of the Bermuda Hundred processing
03:44:06 20 facility and I'll just read it, "To produce
03:44:08 21 filler with less than 10 percent residual
03:44:10 22 nicotine for cigarette manufacturing to support a
03:44:14 23 new brand introduction and the creation of a new
03:44:16 24 product. Bermuda Hundred is designed to have a
44:18 25 capacity to support" --

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03:44:18 2 MR. NUNLEY: Of a new market.

03:44:22 3 Q. I apologize. "Of a new market.

03:44:24 4 Bermuda Hundred is designed to have a capacity to

03:44:26 5 support the production of 12 billion cigarettes

03:44:30 6 based on a seven-day a week operation or

03:44:32 7 approximately two market share points."

03:44:34 8 A. Yeah. Alex, can I just clarify

03:44:36 9 something. You said 10 percent residual.

03:44:40 10 Q. I'm sorry, less than .10 percent.

03:44:40 11 A. Thank you.

03:44:42 12 Q. The second paragraph appears to
· 44:46 13 describe a process and I'm just going to read

03:44:48 14 that to you: "The technology for this process is

03:44:50 15 new to the cigarette industry, but had been

03:44:52 16 utilized in the manufacturing of decaffeinated

03:44:56 17 coffee at Kaffee Hag in Germany and most recently

03:45:00 18 at General Foods in Houston. At Bermuda Hundred

03:45:04 19 strip will be blended and cut. Nicotine will be

03:45:06 20 extracted from cut strip and deposited on stems.

03:45:08 21 A major commitment for the next five years will

03:45:10 22 be adaptation of the process enhancements

03:45:20 23 developed by Bermuda Hundred and R&D." In

03:45:22 24 general terms is that an accurate description of

45:24 25 the nicotine extraction process that was used at

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MANHATTAN REPORTING CORP.

1 Whitman - Highly Confidential - Trade Secret

03:45:28 2 Bermuda Hundred to produce the denicotinized
03:45:28 3 cigarette?

03:45:30 4 MR. NUNLEY: Objection as to form. I

03:45:32 5 don't know that I see a description of the

03:45:32 6 process anywhere.

03:45:34 7 A. Right.

03:45:36 8 Q. Is that a general description of what

03:45:40 9 occurs? And by that I mean "Strip will be

03:45:44 10 blended and cut, nicotine will be extracted from

03:45:50 11 cut strip and deposited on stems"? Does that

03:45:54 12 accurately describe what happened at Bermuda

45:54 13 Hundred?

03:45:54 14 A. Yes.

03:46:20 15 Q. What happened to the stems on which
03:46:22 16 the nicotine was deposited?

03:46:32 17 A. From the entire operation of the
03:46:36 18 plant during the time that it was operational?

03:46:36 19 Q. Yes.

03:46:42 20 A. To my recollection, all those stems
03:46:46 21 went through a processing step at Park 500 and
03:46:50 22 were landfilled.

03:46:52 23 Q. Are you aware of any efforts to use
03:46:56 24 ^{producing} those stems in reconstituted tobacco?

~ 47:04 25 A. Were there considerations given to

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03:47:04 2 doing that? Yes.

03:47:10 3 Q. Did you participate in any way in
03:47:18 4 efforts to consider using those stems in
03:47:18 5 reconstituted tobacco?

03:47:20 6 A. That work was done by R&D. It wasn't
03:47:20 7 done by Bermuda.

03:47:22 8 Q. Do you know who specifically worked
03:47:24 9 on that?

03:47:32 10 A. I really don't recall. I believe it
03:47:34 11 was Howard Spielberg, though.

03:47:34 12 Q. I'm sorry?

03:47:36 13 A. I believe it was Howard Spielberg if
03:47:40 14 my memory serves me correctly, but that is,
03:47:40 15 again, strictly from memory.

03:47:48 16 Q. Do you know whether Donald Knudson
03:47:52 17 might have worked on that project as well?

03:47:54 18 A. Other than supplying the stems to
03:47:56 19 R&D? No.

03:48:34 20 MR. ROGERS: ~~Would you mark this as~~
03:48:34 21 ~~Exhibit 18.~~

22 (Whitman Exhibit 18 for
23 identification, memorandum, from H. Spielberg, to
24 J.E. Bickett, dated September 22nd, 1989,
25 production number 2031477543.)

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MANHATTAN REPORTING CORP.

1 Whitman - Highly Confidential - Trade Secret

03:48:36 2 Q. You've just been handed what's been
03:48:40 3 marked as Whitman Exhibit 18, which is a one-page
03:48:44 4 document bearing the Philip Morris production
03:48:46 5 number of 2031477543. It is marked trade
03:48:48 6 secret. It does not contain a defendant
03:49:02 7 production number. This appears to be a memo
8 from H. Spielberg to J.E. Bickett, date September
03:49:06 9 22nd, 1989, subject "Utilization of MPC treated ^{stem}
03:49:12 10 from Bermuda Hundred in RCB." The term MPC --
03:49:12 11 let me back up.

03:49:14 12 Have you ever seen this document
49:14 13 before?

03:49:16 14 A. No, I have not.

03:49:20 15 Q. What do you understand the term MPC
03:49:22 16 stem from Bermuda Hundred to mean?

03:49:26 17 A. The stem was treated with a compound
03:49:32 18 referred to as monopotassium citrate during the
03:49:32 19 Bermuda Hundred process.

03:49:38 20 Q. And why was monopotassium citrate
03:49:40 21 added to the stem of Bermuda Hundred?

03:49:42 22 A. It provided the basis for absorbing
03:49:48 23 the nicotine on the stem, or it helped to do
03:49:48 24 that.

49:56 25 Q. Were other stems treated with citric

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03:49:58 2 acid to achieve the same objective?

03:49:58 3 A. To my knowledge, yes.

03:50:00 4 Q. And have you seen references to those
03:50:02 5 stems as CA stems?

03:50:06 6 A. Yes, I have.

03:50:10 7 Q. Do you know whether any MPC stems
03:50:14 8 from Bermuda Hundred were used in RCB?

03:50:18 9 A. I have no knowledge of that.

03:50:20 10 Q. I take it RCB is the product that's
03:50:22 11 generated at the BL facility?

03:50:22 12 A. That's correct.

50:26 13 Q. And in September of 1989 remind me
03:50:26 14 what your position was?

03:50:28 15 A. I was still in New York at that
03:50:34 16 point. I'm sorry, that doesn't answer your
03:50:36 17 question. Director of commercial development in
03:50:38 18 New York.

03:50:40 19 Q. And the content of the memo is very
03:50:42 20 short. I'll read it: "It is recommended that
03:50:50 21 ART stems (VSTDL and VSTB1) be substituted for up
03:50:54 22 to 3 percent Burley stem in RCB based on
03:50:58 23 subjective evaluations of RCB production trials.
03:50:58 24 Would you please issue the appropriate
51:04 25 specifications." Were you aware of any

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03:51:08 2 subjective evaluations that were conducted on RCB
03:51:12 3 that contained ART stems?

03:51:18 4 A. In this time frame? No.

03:51:20 5 Q. How about in any other time frame?

03:51:24 6 A. Later on my recollection is is that

03:51:32 7 there were trials conducted, my memory wants to

03:51:40 8 say with the CA stems, I'm not even sure of that,

03:51:42 9 as to their subjective acceptability in recon.

03:51:44 10 Q. Do you remember what the results of
03:51:46 11 any of those tests were?

03:51:50 12 A. My recollection is all those test

51:52 13 results were negative. They were subjectively

03:51:52 14 negative.

03:51:58 15 Q. And you're not sure whether those
03:52:02 16 were CA stems as opposed to MPC stems?

03:52:04 17 A. I'm really not positive of that, no.

03:52:04 18 Q. Do you remember seeing specific
03:52:08 19 documents reflecting the subjective evaluations?

03:52:10 20 A. No, I do not.

03:52:14 21 Q. Do you remember any conversations you
03:52:14 22 might have had with anyone?

03:52:18 23 A. I remember the conversations as to
03:52:20 24 the subjective, the negative subjectives of those
52:24 25 things, but specifically was that with Howard or

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03:52:26 2 whomever? I really don't recall.

03:52:46 3 Q. What would you understand this to
03:52:48 4 mean: "Would you please issue the appropriate
03:52:52 5 specifications" in a memo from Spielberg to
03:52:54 6 Bickett, what would that mean, the appropriate
03:52:58 7 specifications?

03:52:58 8 MR. NUNLEY: Objection. I think it
03:53:02 9 calls for testimony outside of his area at the
03:53:02 10 company.

03:53:06 11 A. I mean I really can't tell you.

03:53:10 12 Q. At this time Howard Spielberg was in
53:10 13 R&D?

03:53:14 14 A. That's my recollection, yes.

03:53:16 15 Q. And Mr. Bickett?

03:53:18 16 A. I'm really not sure.

03:53:24 17 Q. And looking down at the names on the
03:53:32 18 cc list, E. Cook, R. Heretick, D. Knudson, J.
03:53:36 19 Myracle, J. Swain, can you identify any
03:53:38 20 individuals on that list that are in R&D, that
03:53:38 21 were in R&D at the time?

03:53:48 22 A. To my recollection, the last four
03:53:50 23 names on that list for sure were in R&D at that
03:53:56 24 time. Where Elmore Cook was working I have no
53:58 25 idea.

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03:53:58 2 Q. When I asked you earlier whether
03:54:02 3 Donald Knudson was involved in any way in
03:54:06 4 consideration as to whether to use ART stems in
03:54:10 5 reconstituted tobacco I think your testimony was
03:54:12 6 something to the effect of only to transport the
03:54:14 7 stems to R&D. Is that accurate?

03:54:18 8 A. From the standpoint of the fact of
03:54:22 9 when you asked me that question I was responding
03:54:24 10 from the time frame in which I was working at the
03:54:28 11 Park 500 site and Mr. Knudson was there as the
03:54:32 12 plant manager for the Bermuda Hundred plant.
' 54:34 13 This precedes that time frame so I have no
03:54:38 14 knowledge of what his involvement might have been
03:54:38 15 with this.

03:54:40 16 Q. I see. But your understanding is in
03:54:42 17 September of 1989 he was in R&D?

03:54:42 18 A. Yes, sir, that's correct.

03:54:46 19 Q. When was he named plant manager of
03:54:46 20 Bermuda Hundred?

03:54:50 21 A. At the same time I was named site
03:54:50 22 manager for the Park site.

03:54:56 23 Q. Have you ever spoken with Dick Uhl
03:54:58 24 about tests on the use of ART stems in
' 55:00 25 reconstituted tobacco?

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03:55:14 2 A. I honestly don't recall.

03:55:22 3 Q. Did the issue of using ART stems in
03:55:24 4 reconstituted tobacco come up in any discussions
03:55:26 5 you had with Mr. Uhl in preparing the affidavit
03:55:28 6 that you've submitted in this case?

03:55:32 7 A. Not that I recall.

03:55:50 8 MR. ROGERS: Would you mark this as
03:55:50 9 Exhibit 19.

10 (Whitman Exhibit 19 for
11 identification, two-page document, production
12 numbers 2031438741 and 203148742 and PB 204500
13 and PB 204501.)

03:56:06 14 Q. Do you recall smoking any
03:56:08 15 denicotinized cigarettes that contained RL?

03:56:18 16 A. De-nic cigarettes that contained RL?
03:56:20 17 Not that I can recall, no.

03:56:26 18 Q. What were the tobacco component parts
03:56:30 19 of the denicotinized cigarette? Was it just
03:56:32 20 lamina?

03:56:38 21 A. From a production standpoint within
03:56:42 22 the Bermuda Hundred processing plant the only
03:56:44 23 thing I can recall is processing just lamina,
03:56:46 24 yes.

03:56:50 25 Q. Nothing else went into the finished

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03:56:52 2 Next product?

03:56:54 3 A. Tobacco component-wise?

03:56:54 4 Q. Right.

03:56:56 5 A. Not that I can recall, Alex.

03:57:04 6 Q. And what was added to the finished

03:57:06 7 Next product that wouldn't fall within what you

03:57:10 8 consider tobacco component-wise?

03:57:10 9 A. Whatever the flavor system would have
03:57:12 10 been added during cigarette manufacturing.

03:57:18 11 Q. You've just been handed what's been

03:57:40 12 marked as Whitman Exhibit 19, two-page document
03:57:42 13 production numbers are 2031438741 to 2031438742.
2031438742

14 The corresponding defendant production numbers
03:57:42 15 are PB 204500 to PB 204501. It appears to be a
03:57:46 16 project update.

03:57:48 17 I'll say at the outset it is marked
03:57:52 18 highly confidential by plaintiffs in this case.

03:57:54 19 The project number is 1307.

03:57:56 20 The project title is reconstituted
03:58:00 21 tobacco development. The project leader is R.G.
03:58:06 22 Uhl and the period covered is September 1990.
03:58:08 23 Have you ever seen this document before?

03:58:10 24 A. No, sir, not that I can recall.

58:12 25 Q. Item number 1 on this is "ART stem

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03:58:16 2 utilization." A is "Objective: Develop the
03:58:18 3 capability to fully utilize spent absorber stems
03:58:22 4 from the ART process." Do you understand the
03:58:28 5 term spent absorber stems from the ART process to
03:58:30 6 mean those stems on which the nicotine has been
03:58:34 7 deposited in the ART process?

03:58:36 8 A. Yes, I do.

03:58:42 9 Q. So spent absorber stems would have a
03:58:46 10 higher quantity of nicotine than they did before
03:58:48 11 they were used in the ART process?

03:58:50 12 A. That's correct.

58:54 13 Q. And then turn to item B, "Results:
03:58:58 14 The status on qualifying the use of ART stems in
03:59:04 15 reconstituted sheet is as follows: MPC-RCB
03:59:10 16 containing 2 percent RCB stems has passed all POL
03:59:12 17 and panel testing. Implementation awaits the
03:59:16 18 installation of a feeder at the BL plant
~~tentatively~~
03:59:18 19 ~~temporarily~~ scheduled for December."

03:59:20 20 And still within that subheading is
03:59:24 21 "CA - blended cigarettes containing either 5
03:59:28 22 percent CA stems in RCB or 2 percent CA stems in
03:59:32 23 RLTC passed flavor development and MC panel
03:59:34 24 testing. The combination of the two sheets in
59:36 25 the same cigarette gave detectable subjective

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03:59:38 2 differences."

03:59:40 3 Looking at this document today, does
03:59:44 4 that refresh your recollection as to the
03:59:46 5 subjective evaluations of using ART stems in
03:59:48 6 reconstituted tobacco?

03:59:56 7 A. My only recollection is that the
03:59:58 8 materials didn't pass. It's the only thing I can
03:59:58 9 recall.

04:00:00 10 Q. Do you know specifically what they
04:00:00 11 didn't pass?

04:00:04 12 A. Subjective testing.

00:10 13 Q. But you're not sure again whether it
04:00:14 14 was just the CA stems or just the MPC stems?

04:00:28 15 A. My recollection is that it was all of
04:00:30 16 them, but that's strictly from recollection.

04:00:34 17 Q. If you look at the item dealing with
04:00:36 18 MPC, it appears that "RCB containing 2 percent
04:00:42 19 MPC stems has passed all POL and panel testing."
04:00:48 20 What's next in terms of the evaluation of a
04:00:54 21 product after something has passed all POL and
04:00:54 22 panel testing?

04:00:56 23 MR. NUNLEY: I believe, Alex, you
04:01:00 24 asked John about this yesterday, not with respect
01:04 25 to ART stem. I think he told you his knowledge

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04:01:08 2 of POL and panel testing basically was they were
04:01:08 3 both conducted and he didn't have much more
04:01:10 4 knowledge of that.

04:01:16 5 MR. ROGERS: Well, I'm just simply
04:01:18 6 going to ask my question. If he's already
04:01:22 7 answered it you can object on that ground if you
04:01:24 8 think that's the case. In the interest of
04:01:26 9 closing the deposition for today I'd like to just
04:01:28 10 ask my question rather than look back to see
04:01:30 11 whether or not it was the exact question I asked
04:01:30 12 yesterday.

01:32 13 Q. Based upon your knowledge of
04:01:36 14 evaluation of products and the procedure that
04:01:42 15 Philip Morris uses, what's next after a product
04:01:44 16 has passed all POL and panel testing?

04:01:50 17 A. I'm really not sure. You'd have to
04:01:52 18 ask the product development folks within R&D.

04:02:02 19 Q. It's your understanding, based on
04:02:04 20 your recollection, that none of the ART stems
04:02:08 21 were used in reconstituted tobacco sold
04:02:08 22 commercially; is that correct?

04:02:10 23 A. I'm sorry, say that again.

04:02:14 24 Q. Sure. Is it your understanding that
02:18 25 none of the ART stems that were used in

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04:02:22 2 reconstituted tobacco -- I'm sorry. None of the
04:02:26 3 ART stems were used in reconstituted tobacco sold
04:02:28 4 commercially in the United States, is that your
04:02:28 5 understanding?

04:02:34 6 A. Strictly from recollection, yes.

04:02:40 7 Q. What happened to the ART stems?

04:02:40 8 MR. NUNLEY: That was asked and
04:02:42 9 answered but you can answer it again.

04:02:48 10 A. We washed those things in a separate
04:02:50 11 processing stage at Park 500 and the stems went
04:02:52 12 to landfill.

02:52 13 Q. And who was in charge of that
04:02:56 14 activity that you've just described?

04:03:04 15 A. Someone within the Park 500 plant was
04:03:06 16 delegated that particular responsibility of
04:03:08 17 overseeing the fact that that occurred.

04:03:10 18 Q. Who did the delegating?

04:03:10 19 A. I did.

04:03:14 20 Q. And who did you receive your
04:03:14 21 direction from?

04:03:26 22 A. It was from product development that
04:03:28 23 we weren't going to use the stems, but who
04:03:30 24 specifically, Alex, I can't remember.

03:32 25 Q. Did that direction come in the form

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04:03:32 2 of a memo?

04:03:40 3 A. I can't recall.

04:03:46 4 Q. Do you recall yesterday the closeout
04:03:50 5 report that I asked you about? Do you recall
04:03:54 6 ever seeing a closeout report for tests on
04:03:58 7 whether to use ART stems in reconstituted
04:03:58 8 tobacco?

04:04:02 9 A. No, I've never seen that.

04:04:06 10 Q. And just so I have the dates right,
04:04:12 11 the total quality management initiative was
04:04:16 12 implemented at Park 500 in 1987 you said?

~ 04:18 13 A. Yes.

04:04:20 14 Q. And it appears from Whitman Exhibit
04:04:28 15 19 that these tests of ART stems were conducted
04:04:34 16 on or about September 1990. Do you know where
04:04:38 17 these tests were conducted in terms of producing
04:04:42 18 the RCB?

04:04:54 19 A. No, I don't, and -- no, I don't.

04:05:00 20 Q. At this time, roughly September 1990,
04:05:02 21 was the total quality management initiative
04:05:06 22 implemented at the BL plant?

04:05:14 23 A. I really can't tell you what progress
04:05:16 24 they had made up to that point in that plant.

~ 05:22 25 Q. And to whom at Park 500 did you

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04:05:24 2 delegate the responsibility for disposing of the
04:05:26 3 stems as you've described?

04:05:26 4 A. To Mr. Narron.

04:05:30 5 Q. And did he ever report back to you on
04:05:32 6 the results of his activities?

04:05:38 7 A. Yeah, he and the person he had
04:05:44 8 delegated it to kept me apprised of the fact of
04:05:46 9 how many had been disposed of and when we
04:05:48 10 finished disposing of them.

04:05:50 11 Q. Were any records kept on the disposal
04:05:50 12 activities?

05:56 13 A. I really can't answer that.

04:05:58 14 Q. Do you know the person that he
04:06:00 15 delegated to assist him with the project?

04:06:04 16 A. I believe that was Bill Estes.

04:06:12 17 Q. And when I asked you whether there
04:06:16 18 were any records kept on the disposal activities
04:06:18 19 you said I really can't answer that. Does that
04:06:20 20 mean to say that you just don't recall?

04:06:22 21 A. Right. I really don't recall having
04:06:22 22 seen any.

04:06:34 23 Q. And you said earlier that Mr. Narron
04:06:36 24 and the person he had delegated kept you apprised
06:42 25 when "we finished disposing of them." Do you

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04:06:44 2 remember roughly when that was?

04:06:52 3 A. I really don't, Alex.

04:06:56 4 Q. And do you know whether there are any

04:07:00 5 documents that might indicate when the disposal

04:07:00 6 process was finished?

04:07:04 7 A. I really don't.

04:07:08 8 Q. And when you were processing the ART

04:07:10 9 stems at Park 500 for the purposes of the

04:07:14 10 disposal, was that on line 3?

04:07:18 11 A. My recollection it was on line 3,

04:07:18 12 yes.

07:22 13 Q. And was line 3 simultaneously

04:07:24 14 producing finished RL sheet?

04:07:26 15 A. Correct.

04:07:30 16 Q. So is it possible at one time to be

04:07:34 17 disposing of the ART stems in the fashion that

04:07:36 18 you've described and producing finished RL sheet

04:07:40 19 without the two processes ever interacting?

04:07:44 20 A. Oh, absolutely, sure.

04:07:46 21 Q. Would you describe why you gave the

04:07:48 22 answer you just did?

04:07:56 23 A. Yeah, we used a spare tank to wash

04:08:00 24 the stems and the wash water went straight down

08:02 25 to the waste treatment plant and the stems were

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04:08:06 2 discharged and landfilled. They never came in
04:08:08 3 contact with the RL production process.

04:08:18 4 Q. Were the stems used at Bermuda
04:08:20 5 Hundred, and I mean prior to the nicotine
04:08:22 6 extraction, just simply preparing the stems for
04:08:26 7 the extraction process, did you also wash those
04:08:28 8 stems at that time before using them in the
04:08:32 9 extraction process as the absorbent medium for
04:08:32 10 the nicotine?

04:08:34 11 A. Be more specific. What do you mean
04:08:36 12 by washing?

08:44 13 Q. I simply mean applying water to them
04:08:46 14 in order to remove whatever would be removed from
04:08:50 15 the water. Was that a stage in preparing the
04:08:54 16 stems for the ART process?

04:09:04 17 A. Not -- not that I can recall. The
04:09:08 18 stems were rolled and cut if my memory serves me
04:09:12 19 correctly, and I'm doing that strictly from
04:09:12 20 memory.

04:09:14 21 Q. I'm sorry, what do you mean by rolled
04:09:14 22 and cut?

04:09:22 23 A. Processed so that -- I'm not even
04:09:24 24 sure of that. I'd have to even go back and
09:34 25 look.

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04:09:36 2 MR. ROGERS: Would you mark this as
04:09:38 3 Exhibit 20.

4 (Whitman Exhibit 20 for
5 identification, memorandum, to Mr. Knudson, from
6 Messrs. Grubbs and Prasad, dated April 14, 1987,
7 production numbers 2031437004 through 2031437006
8 and PB 110857 through PB 110859.)

04:09:50 9 Q. You've just been handed what's been
04:09:52 10 marked as Whitman Exhibit 20 which is a
04:10:10 11 three-page document, production numbers
12 2031437004 to 2031437006. The defendants'
10:10 13 production numbers are PB 110857 to PB 110859.
04:10:16 14 This is a memo dated April 24, 1987 from H.
04:10:22 15 Grubbs and R. Prasad to Mr. D.B. Knudson, subject
04:10:24 16 matter efficient washing of stems. The document
04:10:26 17 is stamped highly confidential.

04:10:28 18 I'll just read the first paragraph
04:10:32 19 and ask you a question: "Project ART requires
04:10:34 20 that the Bright stems be washed in an efficient
04:10:36 21 way, in order to reduce the background nicotine
04:10:40 22 level to under 0.1 percent DWB. Currently, the
04:10:46 23 Bower Digester requires four passes to achieve
04:10:48 24 target nicotine level in the stem. The wash
10:52 25 liquor is too dilute to be of any use and it is

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04:10:54 2 presently discarded." Looking at this document,
04:10:56 3 does this refresh your recollection about washing
04:11:02 4 stems in the course of Project ART?

04:11:02 5 A. No, it does not.

04:11:10 6 Q. If you'll look to the second
04:11:14 7 paragraph, the authors propose to "wash stems in
04:11:18 8 an efficient manner using a pulse column
04:11:22 9 extractor" and then they describe in the last
04:11:24 10 sentence of that paragraph, "The resulting wash
04:11:28 11 liquor concentration will be high enough to allow
04:11:30 12 the soluble solids to be used in sheet making
04:11:34 13 operation." Do you know of any substance in the
04:11:36 14 ART process that was ever used in the sheet
04:11:38 15 making operation?

04:11:40 16 A. Absolutely not.

04:11:48 17 Q. If I can direct your attention to
04:11:52 18 Whitman Exhibit 8 which is the article by Donald
04:11:54 19 Silberstein that we talked briefly about
04:11:58 20 yesterday, I want to ask you one question and
04:12:00 21 that will conclude today's session.

04:12:24 22 Do you have it in front of you?

04:12:24 23 A. Yes, sir.

04:12:26 24 Q. If you'll turn to Page 3 of this
04:12:32 25 document, the production number is ~~PP~~^B 102086.

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04:12:34 2 The middle column has a subheading "Nicotine
04:12:38 3 fortification," and I'll just read it: "The
04:12:40 4 flexibility of the two-step Kimberly-Clark
04:12:42 5 process allows for many changes in the chemical
04:12:44 6 properties of the finished reconstituted tobacco
04:12:48 7 sheet. One change that should be discussed when
04:12:50 8 speaking of flavor is the fortification of the
04:12:54 9 nicotine content of the finished sheet. Though
04:12:56 10 standard reconstituted tobacco products contain
04:13:02 11 0.7 to 1.0 percent nicotine, LTR Industries
04:13:04 12 offers the possibility of increasing the nicotine
13:08 13 content of the final sheet to a maximum of 3.5
04:13:12 14 percent." Based on your knowledge of Philip
04:13:16 15 Morris's reconstituted tobacco process, does
04:13:18 16 Philip Morris's reconstituted tobacco process
04:13:20 17 offer the possibility of increasing the nicotine
04:13:26 18 content of the final sheet to a maximum of 3.5
04:13:28 19 percent?

04:13:28 20 MR. NUNLEY: Objection. Calls for
04:13:30 21 speculation.

04:13:30 22 Q. You can answer.

04:13:34 23 A. I've never seen that considered,
04:13:34 24 never seen that done.

13:36 25 Q. Based upon your knowledge of the

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04:13:42 2 process, is it physically possible to increase
04:13:44 3 the nicotine content of the finished sheet that's
04:13:48 4 produced at the Park 500 facility?

04:13:52 5 MR. NUNLEY: Physically possible to
04:13:52 6 increase it?

04:13:54 7 MR. ROGERS: The nicotine content of
04:13:56 8 the finished sheet, based upon his knowledge of
04:13:58 9 the reconstituted tobacco process that Philip
04:14:00 10 Morris uses.

04:14:02 11 MR. NUNLEY: Physically possible to
04:14:02 12 increase it to what?

14:08 13 MR. ROGERS: Above that which it's
04:14:08 14 currently produced at.

04:14:16 15 Q. Which you estimated to be roughly 1
04:14:18 16 to 1.3.

04:14:20 17 MR. NUNLEY: Objection; speculation.

04:14:20 18 A. But how?

04:14:20 19 Q. You don't know any method of
04:14:24 20 increasing the nicotine content above what you
04:14:28 21 understand to be the present content of 1 to 1.3
04:14:28 22 percent?

04:14:34 23 A. The only thing I am aware of is what
04:14:38 24 we feed in and what we get out. I mean if you
14:58 25 had some specific methodology, I have no idea how

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04:15:02 2 he's accomplishing this here.

04:15:02 3 Q. Did you ever have any discussions
04:15:04 4 with Mr. Silberstein in the context of your
04:15:08 5 dealings with him in qualifying sheet produced by
04:15:14 6 Kimberly-Clark about a process used by LTR to
04:15:18 7 increase nicotine content of the final sheet?

04:15:20 8 A. Absolutely not.

04:15:22 9 REQ MR. ROGERS: Why don't we conclude
04:15:30 10 for today. I want to say one thing for the
04:15:32 11 record, Chip. Earlier in Mr. Whitman's testimony
04:15:38 12 he mentioned RL process specifications I
15:40 13 believe. They may well have been produced in
04:15:46 14 this case. If I could request that you simply
04:15:48 15 ask Mr. Whitman specifically what he was talking
04:15:50 16 about and if those documents have been produced
04:15:52 17 for you to identify them.

04:15:54 18 MR. NUNLEY: I'm not going to be put
04:15:56 19 to the position of searching through our
04:16:00 20 documents to locate those. You know, I think
04:16:02 21 anything that has to do with the RL process in
04:16:10 22 date, has been produced. I gotta tell you I've
04:16:12 23 got plenty enough to do without tracking down the
04:16:16 24 documents that you have as much access to as I
16:16 25 do.

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04:16:18 2 MR. ROGERS: Your witness testified
04:16:20 3 in this deposition as to specific documents
04:16:24 4 dealing with process specifications of the RL
04:16:26 5 process and I simply want to make sure that those
04:16:30 6 documents have been produced to the defendants in
04:16:30 7 this case.

04:16:34 8 MR. NUNLEY: As I've said, any
04:16:38 9 documents relating to RL process in date, to my
04:16:40 10 knowledge, have been produced.

04:16:46 11 MR. ROGERS: Because Mr. Whitman
04:16:50 12 didn't identify the specific dates of the process
' 16:52 13 specification documents that he had based his
04:16:54 14 testimony on, I have no way of knowing whether
04:16:56 15 those documents were produced.

04:17:00 16 MR. NUNLEY: I mean I'll talk to the
04:17:00 17 witness about it, but I'm not committing to do
04:17:04 18 any type of a search of the documents produced.

04:17:40 19 Q. Mr. Whitman, do you remember anything
04:17:42 20 about the RL process specification documents that
04:17:44 21 you talked about earlier in your testimony? I
04:17:46 22 mean date --

04:17:48 23 MR. NUNLEY: Alex, I told you I
04:17:52 24 needed to get out of here near four. You told me
' 17:54 25 about ten after that you had one more question.

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04:17:56 2 You had a couple of more which I'm happy to do,
04:17:58 3 but I have a commitment at 5 o'clock.

04:18:00 4 MR. ROGERS: I appreciate your
04:18:04 5 commitment. We didn't start until roughly 9:20
04:18:06 6 or so this morning, although we were all here at
04:18:10 7 nine, and we're now at 4:18. So I mean it's not
04:18:12 8 as if I'm holding you over when we started on
04:18:16 9 time. We did start late today. And I just want
04:18:18 10 to clear this up for the record because there
04:18:20 11 were documents identified that I'm just trying to
04:18:22 12 get a clear sense for what they were.

18:26 13 Q. That having been said, Mr. Whitman,

04:18:28 14 I'll just repeat my question. Do you remember
04:18:30 15 anything about the RL process specification
04:18:32 16 documents that you talked about earlier in your
04:18:32 17 testimony?

04:18:38 18 A. What do you mean anything? ^{about} ₁

04:18:40 19 Q. The date, do you remember any names
04:18:44 20 that appeared on them, do you remember any of the
04:18:44 21 specific information?

04:18:46 22 A. The dates that I would recall in that
04:18:48 23 regard, Alex, were from the time that I was in
04:18:50 24 charge of our process control and quality
assurance group which would have been in the late

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04:18:52 2 seventies time frame.

04:19:00 3 MR. ROGERS: As we said at the outset
04:19:02 4 this morning, Chip, and I think you said for the
04:19:06 5 record, you're going to endeavor to identify and
04:19:10 6 gather the documents upon which Mr. Whitman
04:19:12 7 relied in preparing his affidavit and identify
04:19:18 8 those production numbers and hopefully make
04:19:20 9 Mr. Whitman available for a continuation of this
04:19:20 10 deposition.

04:19:22 11 MR. NUNLEY: Well, I'll rely on the
04:19:24 12 statement I made at the outset of the deposition
19:26 13 about that.

04:19:26 14 MR. ROGERS: Absolutely. I was just
04:19:28 15 reconfirming that. I was content at the time.

04:19:30 16 MR. NUNLEY: I don't necessarily
04:19:32 17 accept your characterization of it. I stand on
04:19:32 18 what I said.

04:19:34 19 MR. ROGERS: Let's do that and we'll
04:19:36 20 break for the day.

21 (Continued on next page.)
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04:19:36 2 THE VIDEO OPERATOR: We're going off

04:19:40 3 the record. The time on the screen is 4:19:51.

04:21:14 4 (Time noted: 4:19 p.m.)

5
6 

7 JOHN M. WHITMAN

8
9 Subscribed and sworn to before me
10 this 25th day of October, 1995.

11 Seth S. Jones, Notary
12 My Commission expires 10 31-97
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2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

5 : ss.

6 COUNTY OF NEW YORK)

7

8 I, GAIL F. SCHORR, a Certified
9 Shorthand Reporter and Notary Public within and
10 for the State of New York, do hereby certify:

11 That JOHN M. WHITMAN, the witness
12 whose continued deposition is hereinbefore set
13 forth (pages 247 through 478) was previously duly
14 sworn, and that such continued deposition is a
15 true record of the testimony of said witness.

16 I further certify that I am not
17 related to any of the parties to this action by
18 blood or marriage, and that I am in no way
19 interested in the outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 16th day of August, 1995.

22

23

24

25

GAIL F. SCHORR, C.S.R.

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E X H I B I T S

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DESCRIPTION

PAGE LINE

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6

(Whitman Exhibit 10 for identification,
 document, production numbers 2030361786
 through 2030361798 and PA 138470
 through PA 138482.)..... 293 8

7

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(Whitman Exhibit 11 for identification,
 document entitled "Procedure for
 collecting SEL samples," production
 numbers 2030749658 and 2030749659, and
 PA 483705 and PA 483706.)..... 312 5

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(Whitman Exhibit 12 for identification,
 document, production numbers 2022902491
 through 2022902592 and PA 151529
 through PA 151547.)..... 363 21

(Whitman Exhibit 13 for identification,
 document entitled "Nicotine reduction
 of an aqueous tobacco extract using a
 membrane based process system,"
 production numbers 2031437082 through
 2031437120 and PB 150935 through PB
 110973.)..... 378 21

(Whitman Exhibit 14 for identification,
 copy of U.S. patent 5,018,540,
 production numbers 2022902477 through
 2022903291, and PA 151916 through PA
 151975.)..... 394 5

(Whitman Exhibit 15 for identification,
 two-page document, production numbers
 2025321065 and 2025321066 and PA 127981
 and PA 127982.)..... 418 2

(Whitman Exhibit 16 for identification,
 two-page document, production numbers
 2024411266 and 2024411267 and PA 198696
 and PA 198697.)..... 422 6

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2 (Whitman Exhibit 17 for identification,
3 document entitled "Richmond processing
4 plants manufacturing plan, 1990 to 1995
5 ," production numbers 2030878610
6 through 2030878791 and PA 802863
7 through PA 803044.)..... 450 3

8 (Whitman Exhibit 18 for identification,
9 memorandum, from H. Spielberg, to J.E.
10 Bickett, dated September 22nd, 1989,
11 production number 2031477543.)..... 454 21

12 (Whitman Exhibit 19 for identification,
13 two-page document, production numbers
14 2031438741 and 203148742 and PB 204500
15 and PB 204501.)..... 460 9

16 (Whitman Exhibit 20 for identification,
17 memorandum, to Mr. Knudson, from
18 Messrs. Grubbs and Prasad, dated April
19 14, 1987, production numbers 2031437004
20 through 2031437006 and PB 110857
21 through PB 110859.)..... 470 3

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[302,21] REQ MR. ROGERS: I would for the record,
[474,9] REQ MR. ROGERS: Why don't we conclude

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